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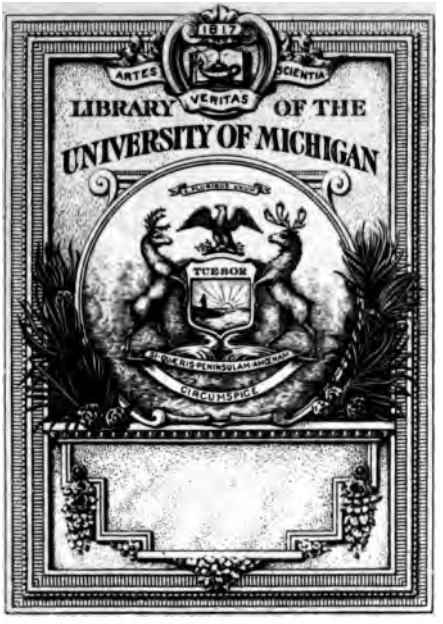

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The Highland Farmer.

A State Journal with a National Reputation.

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Editor and Publisher

J. S. PITTS,
Associate Editor

Official Organ of the Pennsylvania State Farmers' Alliance.

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Published Monthly at Seventy per Year.

The Umberger Tragedy,

—WITH A—

CRIMINAL HISTORY

—OF—

SOMERSET COUNTY, PA.

I was born and lived until age 16 in neighboring West Newel and Co (West Newton Pa

FROM
Dr. H. WINNETT OR
308 Sharp Building,
Lincoln, Nebraska
Univ. M.
189

BY EDWARD H. WERNER.

1890

Present By uncle Fletcher Critchfield To

PRINTED AT THE OFFICE OF
THE HIGHLAND FARMER,
SOMERSET, PA.

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TO THE PUBLIC.

This little book has been written and published with a purpose to supply what was believed to be a general and increasing demand for a convenient, concise and reliable account of the now famous Umberger homicide in Jenner township, and other high crimes committed within the borders of Somerset county in the year 1889 —a year that must remain long memorable in our county's annals for its unusual record of sanguinary deeds. That this belief was well founded has been already abundantly proved.

The numerous subscriptions following the announcement of the book's preparation induced the publisher to enlarge considerably upon the original scope of the work, so that the completed book contains additional matter pertaining to the criminal history of Somerset county that is believed will be of general interest to the people of the county and regions contiguous thereto.

It has been the aim of the writer to avoid sensational coloring of facts which would class the book among the already too numerous mass of objectional publications and detract immeasurably from its historical value.

The book may be disappointing in a double sense. It will probably encounter the criticisms of a mawkish sentimentality on the one hand; and it may fail to satisfy the views of the extremely rancorous who have awaited the administration of the law with manifest impatience. If, however, it shall be instrumental in dispelling the mistaken impression that Somerset county is a favorite field for criminals, in which to ply their vocation, its mission will be amply fulfilled.

The success of the enterprise has been largely due to the efforts of JOHN W. PATTON, ESQ., who has covered the business field in a manner unusually thorough and effective, in advance of publication.

E. H. W.

PART I.

CHAPTER I.

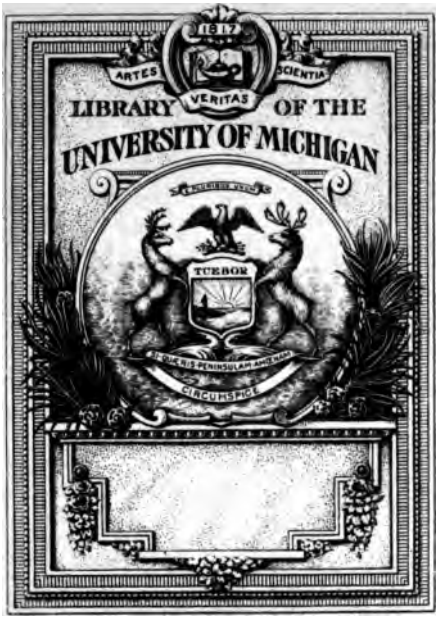
February 27, 1889, was a dreary, rainy day. The snow had for the most part melted away in the fields about Jennertown; only here and there a drift remained. The roads were soft with slush and mud, while on the mountain side and in the woodlands snow still covered the ground to a depth of several inches.

These were the meteorological conditions in Jenner township, immediately east of Laurel Hill mountain, on the day preceeding the evening on which were enacted the murder and robbery at the home of Herman Umberger, an event which in some respects has never been parallelled in the history of Pennsylvania.

West of the Laurel Hill range, in Westmoreland county, the snow had entirely disappeared. This disparity in the temperature of the country east and west of the Laurel Hill mountain is due to the difference in the respective altitudes of the two regions. Jennertown lies nearly 900 feet higher above tide water than Ligonier.

The Umberger farm lies just two miles north of Jennertown, on the turnpike that leads from Somerset, through Jennertown, to Johnstown. The house stands to the left of the road as you go North, at the foot of a small hill, and the large barn stands to the right a little distance from the road. The farm of nearly two hundred acres was kept well stocked and thoroughly cultivated.

On that fatal Wednesday evening Mr. Umberger was seated in the sitting room of his house. About him were his wife, Mrs. Ella Stern, the hired girl, and Nannie Horner, the ten-year-old grand-daughter of Mrs. Umberger. George Horner, the 18-year-old grand-son of Mrs. Umberger, who was doing the feeding and other work about the farm during the illness of Mr. Umberger



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western slope of Laurel Hill in the direction of Ligonier to a point beyond Burnt Cabin, within three miles of the village of Laughlinstown.

Constable Rauch had come over to Somerset the morning after the murder and requested the county commissioners to offer a reward for the arrest of the murderers. Court was in session, and John R. Scott, Esq., the attorney for the county commissioners, submitted the matter to the Court. Judge Baer said there was no authority conferred by law upon the commissioners to offer such reward.

While at Somerset Constable Rauch telegraphed to the police authorities at Johnstown informing them of the murder. Officers Waters, Harris and Varner at once left Johnstown for the scene of the murder, arriving at the Umberger house in Jenner township just before dark on the evening of February 28th. They proceeded at once in the direction of Ligonier and that night arrested Collins Hamilton. Following is the account of Hamilton's arrest as given before Judge Baer at the *habeas corpus* hearing by Constable Waters on March 14th:

I live in Johnstown; am a constable; on the 28th of February I came into this county to Mrs. Umberger's for the purpose of helping hunt the murderers; we started from Mrs. Umberger's across the mountain, west; stopped at Mr. Hamilton's house about 12 o'clock at night, or between 12 and 1; we went up stairs and found Hamilton in bed; arrested him without any trouble; he had two loaded revolvers and thirty dollars in money, twenty dollars in gold and ten in paper, under his pillow, and here they are; (producing revolvers and money) when we arrived at the house we knocked at the door; an old lady came to the door; Varner and Harris went in and then called me in; Varner was standing at the stairway; the old lady said: "For God's sake don't go up stairs some one will be killed;" we went up stairs, found him in bed and arrested him; told him we would have to hand-cuff him; he said, "all right, I am used to that;" the revolvers were 32 calibre and were loaded; I gave them to Constable Rauch; on the outside of the bed room door was written in white chalk,

"DEATH TO ALL WHO ENTER."

When arrested he appeared very nervous and excited; I stayed at the house till the next morning, when I took him to Laugh-[illegible]n and got a wagon and took him back to Umberger's.

[illegible] Constable Rauch got to Ligonier the other members of his party, who had crossed over the turnpike into Westmoreland, were in possession of facts and circumstances that pointed strongly to Joseph and David Nicely, residing in Ligonier township, Westmoreland county, as the men who murdered Umberger. Accord-

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searched it amounted to $4.16. This was in separate pockets, and while searching Dave Nicely the question arose as to the amount belonging to Joe Nicely, at which J. N. spoke up in a very loud tone of voice, saying "$4.16 I had." The words had barely escaped him when Miss Stern jumped up from her chair and said, "That is the voice," to which the widow nodded assent.

Hardly had the excitement which followed this abated a little when John Rauch, who was searching Dave Nicely, pulled out from his left hip pocket a red handkerchief covered with round white dots. It hardly made its appearance in John Rauch's hand when Ella Stern cried out in a loud voice: "That is the handkerchief! That is the handkerchief!" There was another red handkerchief which had been taken from Joe Nicely, which was a dirty one and which had some white spots, but of a different pattern. Dave Nicely seized both of the handkerchiefs and holding the one which had been found on Joe Nicely to the front, said to Miss Stern, "Why do you say that this is the handkerchief?" She answered, "I did not say that was the handkerchief; it is the new handkerchief that you have there." In the midst of all this excitement I said, "You daren't let her put the handkerchief on you the way you had it on that night;" to which he said, "Yes, I dare," whereupon I handed her the handkerchief, and she took the new one and folded it the same as it was when the robber had it over his face on the night of Feb. 27, 1889. . . . She then took the 2nd handkerchief—the dirty one that had been found one Joe Nicely—and tied that around his chin and on the crown of his head. She then said "You are the man," and every person present was satisfied that he was the man, and that she had not made any mistake. . . . Knowing that in Court the lawyers would try and make it out that Miss Stern had not made this identification under oath, I immediately sent down stairs for 'Squire Rauch and when he came up I had Miss Stern repeat the foregoing, all in his presence, of course, under oath."

[illegible]inson afterwards said that he never saw anything so *dramatic on the stage* as Miss Stern's recognition of the handkerchief *taken from David Nicely*, its effect on the crowd of persons *present was electrical.*

Justice Rauch committed the prisoners for trial, and they were taken to Somerset and placed in the county jail the same evening.

THE POCKETBOOK.

The following interesting account of the discovery of one of Herman Umberger's pocketbooks is taken from the notes of Super-

HERMAN UMBERGER.

intendent Gilkinson:

"*When* we got ready to start I found that Shaffer and O'Conno

were going to ride with Bill Thomas, who was driving a team belonging to "Pud" Glessner, while I got into a covered buggy or wagon also belonging to Glessner, but driven by Constable Ambrose. This left Thomas, Shaffer and O'Connor in one covered buggy and Ambrose and myself in the other. Thomas and his party started first and we followed. We kept in this position all the way to Ligonier, and when we got to about the top of the mountain we met a covered buggy and team with two men in it and they stopped opposite the wagon that I was in, while Bill Thomas stopped some 20 or 30 feet ahead of us. Both of these men wore derby hats and dark clothes, and the man who was driving asked Constable Ambrose how the hearing had gone, and Ambrose replied, "Well they have been held for court." The man in the buggy then said something that I did not catch, but Ambrose replied, "Well, it looks very bad for them, as the girl identified them." Just before the conversation began Bill Thomas, who was in the buggy heretofore spoken of, ran back and said something to the man who was driving the buggy towards Jennertown. Thomas then went back to his covered wagon, and as the conversation closed as stated above, with Ambrose telling him that it looked very bad for them, the man then asked Ambrose whether he thought he would be able to see them before they left 'Squire Rauch's, and Ambrose said he thought they would. Just at this point the man who was driving the buggy towards Jennertown cried out to Thomas: "You can give me that now," or "I will take that now," I am not certain which. The result was that Thomas came back, and a moment afterwards I saw a large black pocketbook lying on the top of the robe that was over the laps of the two men that were going to Jennertown. This pocketbook was probably 7 or 8 inches long, four inches wide, and the one end of it had a white spot on it, which looked to me as though the leather had been split off with a knife or something sharp, the spot extending probably an inch in one direction and about the same in the other direction. I know that it struck me that I had never seen a pocketbook with a white spot like that before; at the same time I [illegible]ood that it was a matter of importance; and I said in a [illegible] to Ambrose, who sat in the seat before me, "Who is that *man giving* that pocketbook?" and he replied "That is Bill Thomas, *a driver for "Pud"* Glessner." "Well," said I, "who is the *man that is getting the pocketbook?*" and Ambrose said, "That is

Watson Menoher a brother-in-law to the Nicelys. "Well," said I, "there is something wrong here," to which Ambrose retorted, "Yes, that ain't right; Thomas oughtn't to have done that." Naturally my first impulse was to jump out of the wagon and demand the pocketbook from Watson Menoher, but on second thought I concluded it would hardly do, owing to the fact that I was not known to any of them as an officer of the law, but simply as a newspaper correspondent for the Philadelphia "Press." I therefore said nothing to Watson Menoher or to George Nicely, who, Ambrose informed me, was the other man in the buggy; but I did ask Ambrose to call Thomas back to our buggy and ask him where he got the pocketbook. Ambrose did this, and, of course, I remained on the back seat and had nothing to say, but when Thomas returned to his wagon Ambrose informed me that Dave Nicely gave Thomas that pocketbook to deliver to Watson Menoher. After this we started on towards Ligonier, and two or three times I talked with Ambrose about the pocketbook and asked him if he could not find out from Watson Menoher what was in it and why Dave Nicely had sent it to him instead of sending it home. Ambrose promised to do this."

The news of the arrest of the Nicelys created a profound sensation throughout the county. They at once retained as counsel Hon. W. H. Koontz and Coffroth & Ruppel. Mr. Perry Umberger, administrator of his brother's estate, employed Messrs. F. J. Kooser and S. U. Trent, of Pittsburg, to assist the District Attorney in the prosecution. Hon. John Cessna, of Bedford, was subsequently employed on the part of the Commonwealth.

CHAPTER III.

Collins Hamilton was given a hearing before Judge Baer on March 14th. Witnesses testified to having traced tracks to within a mile of the residence of Hamilton at the old toll gate house near the western base of Laurel Hill mountain. The young man had been taken before Mrs. Umberger, Miss Stern and Nannie Horner, none of whom identified him in any particular. The Nicelys had already been arrested and evidence incriminating them was multiplying. Mr. Kooser argued that while the Commonwealth ha

not shown the defendant to be in the county at the time the offences charged were committed and had not connected him with the murder itself, they had traced the tracks of the murderers to his door, and that this, in connection with his previous bad character, his being heavily armed when arrested, etc., justified the Commonwealth in asking for his retention, and the circumstances surrounding the prisoner warranted the Court in remanding the prisoner to jail.

Messrs. Scott and Holbert argued that there had not been the slightest particle of evidence adduced incriminating their client, and insisted that he should be discharged.

The Court decided that the prisoner should be held for a further hearing, and set Thursday, March 28th, as the day.

The same date—March 28th—was also set for the hearing in the case of the Commonwealth against Joseph and David Nicely.

To those who witnessed the rush of people to the Court House on that day, March 28th, 1889, will be one of the memorable days of their lives. The court room was undergoing repairs at the hands of the carpenters and artisans. A scaffolding about eight feet above the floor covered the entire room. Judge Baer and his associates sat on hastily improvised seats. The lawyers, the prisoners, their friends and witnesses sat around two tables directly in front of the judges, and close around them surged a mass of excited humanity. Nobody would sit down, and it required about fifteen minutes of coaxing and threatening on the part of the court officials to secure order, so that the court might begin its work.

The first witness called was Hammer Cauffiel, who testified to the tracks he traced in the snow and mud to and around the Umberger residence, as follows:

We made an investigation to see if we could see any tracks made by the parties as they fled; we stayed there till after 12 o'clock. Next morning I came back again with other parties and we further investigated for tracks; when we came on the top of the hill above Mr. Umberger's house in the pike, right off to the right of the pike as you go from Somerset to Johnstown, we saw the tracks of two persons that went across below; this was about forty or fifty rods from Umberger's; then we went into the field diagonally somewhat in the direction of the house, over to the right in the woods, which would bring them about twenty or thirty rods from the house; these tracks did not go directly in the direction of Umberger's house; they went over to the right, across the field into the woods. *There they stopped, and* from all appearances, took a lunch and *then came back, and that* brought them nearer to Umberger's

house than where they left the pike; from the woods to Umberger's house the land is high; it is a sort of knob, and from where they stopped they could see along the Johnstown Pike probably three-quarters of a mile, and they could see back toward Somerset, where they had turned off the road, a considerable distance along the pike, and they could see right down on the porch in front of Umberger's house.

The tracks then went back to the road somewhat nearer Umberger's house—a few rods, perhaps; we then went around further to see if we could see the tracks that went back; from all appearances these were tracks of parties that were coming to Umberger's; we wanted to investigate to see if we could find any tracks leaving the place, and we came up the pike, but we couldn't find any; the first place we found tracks that went away was one place this side of Jennertown; we found tracks in the evening that went away. The tracks that came down looked like the same tracks; we took these two tracks that were coming in the direction of Umberger's and tracked them up the bottom.

They passed through between Friedline's and Picking's to the "elbow" of the Ligonier Pike; they were going right across the fields, where they left the turn or "elbow" in the pike above Judge Picking's; that is about a mile and a-half from the bridge below Jennertown; then we followed these tracks up pretty near to what is called the Haynes Church; there had been church there the evening before, and there we were confused by the tracks of parties coming to church; then we didn't see the tracks again till we came above Walters', and from there we had the tracks till we came to the Burnt Cabin; the distance from the church to Walters' is about fifty rods; the Burnt Cabin is on the Westmoreland side of the mountain.

Lewis W. Vannear was then sworn and testified as follows:

I reside in Ligonier; I am pretty well acquainted with the people there, and have been there for sixteen years; I know Joseph and David Nicely and have known them six or eight years; I live about four miles from them; when David was in partnership with his brother, keeping hotel in Ligonier, he lived about a square from me; I think he was there about a year; I have seen them pretty often since then, but not as often as I did then; I saw them on the 27th of February, on what is called "Sand Flat," on the pike on the Laurel Hill; that is the Pittsburg & Philadelphia Pike, the one that comes across the mountain through Ligonier and Jenner X Roads; they were going east across the mountain.

I positively identify them as the men; they were walking very fast; Dave, the tall one, was nearest to me; I was thirty-eight yards from them; my father was with me; we were cutting logs; this was between 4:30 and 5 o'clock in the evening on the 27th of February; I would suppose the place I saw them was about six miles and a-half from their home; where I saw them was between a mile and a-half and two miles from the county line.

I couldn't tell positively about their clothes; Dave wore a cap and Joe a "gondola" or "Derby" hat; the cap was brown and pretty much the same color as the hat. [Cap shown]. That is the cap he had on. [Witness points out the one that wore the cap]. I had often seen him wear the cap before; after the murder I didn't see Dave 'till the day he was arrested; before that I don't think I saw him since last fall; when I saw them that day they were on the Pike, and my father and I were down below the Pike; we looked up toward them; we had a very good view of them.

Cross-examined.—The "Sand Flat" is on the western side of the mountain, two miles and a-half from Laughlinstown and something more than a mile from the toll-gate; it is east from the toll-gate, and half a mile to three-quarters from the "Burnt House;" we were in the woods and looked up and saw them; there is no mark on the cap, but I know it when I see it.

Miss Ella Stern and Mrs. Umberger were next sworn and testified substantially in the same line as they did before Justice Rauch.

Constable John O. Rauch was sworn and testified to the circumstances leading to the arrest of the prisoners.

COLLINS HAMILTON DISCHARGED.

The examination of the witnesses having failed to add anything to the evidence previously taken against Collins Hamilton, and the Commonwealth's attorneys having nothing further to offer to show cause why Hamilton should be held as a party to, or as an accomplice of the guilty party, in the murder of Herman Umberger, Judge Baer made an order on the back of the writ of habeas corpus, discharging Collins Hamilton from the custody of the Sheriff.

Messrs. Koontz and Coffroth argued that the evidence was of such an indefinite character as to permit the release of the prisoners on bail—that they were prepared to furnish bail in $50,000, if such a sum were required. Messrs. Kooser and Biesecker protested that the offense committed and the evidence given were such that the Court must either remand the prisoners to jail or discharge them.

At the conclusion of the argument Judge Baer said:

"If this evidence constitutes murder—then it constitutes murder of the first degree. Under the evidence as submitted, we could not release these men, and we will have to remand them."

The Judge then endorsed the writ remanding the prisoners to *the custody of the Sheriff.*

MRS. UMBERGER.

The weeks intervening before May Court, at which Joseph and David Nicely were tried, were weeks of great anxiety and suspense to those interested, on both sides. The defendants strongly protested their innocence, and said they could prove themselves so by evidence that could not be controverted; that what testimony was given implicating them was the work of unscrupulous enemies.

The robbery and inhuman torture of Mr. Christian Yoder by the notorious McClellandtown Gang on the evening of April 13th, set the public pulse to a still more rapid beat, and the capture of the gang in their stronghold in Fayette county on Sunday, April 28th, kept the excitement at a high pitch up to the eve of May term, when it was generally expected justice would have some innings.

Just before the May term of Court the old county jail contained eighteen prisoners, among them three women. It was known that some of the prisoners were of the most desperate men in the State, and a strong guard was placed over the jail, day and night.

WAS THERE SUCH A PLOT?

The Pittsburg "Dispatch" of May 2nd, contained the following account of a conspiracy to make additional arrests for the murder of Herman Umberger, with the purpose of shielding the Nicely brothers:

The plot the detectives unearthed was one to get the Nicely boys out of jail and fasten the crime on the alleged ex-convict Hamilton. It was found that relatives of the two Nicelys were going to have two men of about the same size and appearance as the real murderers arrested the day before the trial—May 27. They were to confess that Hamilton committed the murder. One of the pocketbooks containing $11,000, was to be found secreted in the house of one of the men. In the house of the other was to be found the gray wig supposed to have been worn by Joe Nicely. Two men Joseph Hoffman and John Koontz were to be the men arrested. Charles Beegle, of Bedford county, who holds a detective's commission, was to search the houses and make the arrests. On account of his record it was supposed that it would not take much evidence to fasten the crime on Hamilton.

Whatever of truth there was in the story, the "Dispatch" undoubtedly got the facts badly mixed. The friends of the Nicelys denied the existence of such a conspiracy. Mr. Kooser subsequently said: "I am satisfied there was a plot of some kind, but what its exact details were I am unable to say. The 'Dispatch' article was no doubt off the mark, but resulted in preventing the conspiracy being carried out."

JOSEPH NICELY.

CHAPTER IV.

May Term of Court opened on Monday, May 27th. No other *court term in the history* of the county was so largely attended. *The "Daily Herald"* speaking of the attendance at court said:

As all anticipated the multitudes are here—here from every section of the county—here from Cambria, from Westmoreland and Fayette counties—here even from border sections of both West Virginia and Maryland—here in such numbers as to fill houses, stores, shops, offices and streets. And, yet, vast as the crowd now is, it will be greatly enlarged when the great murder and robbery trials will take place. Our houses of public entertainment—the Somerset, West End and Commercial hotels, are taxed to their utmost capacity seemingly to accommodate their hundreds of guests ; and yet their proprietors say they can still find room for more. Like omnibuses and street railway cars they are never too full not to take in a few more.

Speaking more generally of the Court and it's work, the "Daily Standard" said :

The history of jurisprudence in Somerset county furnishes no parallel to the number and importance of the trials embraced in the criminal list for the present term of Court. The length of time that has elapsed since the indictment of those charged with offences has given both sides ample opportunity to be well prepared for the ordeal of trial, and the people have reason to expect that no hitch will occur to delay the proceedings and involve unnecessary costs.

It is expected that the trial of Joseph and David Nicely, charged with the murder of Herman Umberger, will be called early in the week. This case is regarded as the most important on the list, as the crime charged against the defendants is the highest known to the law. The law holds the accused innocent until proven guilty, and now, since the excitement and passion aroused by the murder of a most reputable and inoffensive citizen has had time to pass away and give the mind over to the control of sober judgment and invincible justice, the accused may feel assured of a fair and impartial trial. The law does not prejudge the prisoner, neither should public opinion. While it may be possible that an intelligent being should not contemplate a crime and form an opinion from the mind's deductions from the rumored circumstances surrounding such crime, it must be remembered that such opinions cannot enter as a factor in the trial of such case, and that no honest man could conscientiously enter the jury box entertaining opinions that would not give way to sworn testimony before a legally constituted tribunal.

There is another feature of this trial that is attracting very general attention, not only in this community, but throughout the State—we refer to the character and ability of the counsel engaged for and against the accused. Three men of national reputation—men who have served the country in the councils of the nation, and made, through their splendid ability, bright and indelible marks to their credit there—will meet in forensic grapple in the prosecution and defense of the men charged with the murder of Herman Umberger. Gen. W. H. Koontz and Hon. A. H. Coffroth are engaged for the defense; and for the prosecution, District A'

torney Biesecker, Hon. F. J. Kooser and Hon. John Cessna, the "Harry Percy" of the Bedford Bar.

Next in importance comes the trials of the men charged with the robbery of Christian Yoder. We believe four of these parties are indicted jointly for the robbery, the others as accessories. Should a severance be asked and granted for the four principles in this case, a great deal of time will be occupied in the disposal of the cause. But time should not weigh against justice.

In the important cases every inch of ground will be contested, and should they occupy as much time as predicted by those who are in position to form correct opinions, it is doubted that the calendar will be cleared at this term.

Joseph and David Nicely were brought into court for trial at about 5 o'clock Thursday evening, May 30th. They were arraigned before the Court by District Attorney Biesecker, and pleaded "Not Guilty." Considering their long confinement they looked exceedingly well, and both were tastefully dressed.

Counsel for the defendants made a formal motion to have the prisoners tried separately. The Court granted the motion, but decided that the District Attorney had the right to elect which case should be tried first, from which the attorneys for the defense took an exception. The exception was over-ruled and a bill sealed.

At the evening session the work of selecting a jury was commenced. Ephraim D. Miller, Esq., of Rockwood, was the first juror that was accepted. Mr. Miller had successfully stood up under a rigid cross-fire of questions by counsel on both sides, lasting about fifteen minutes. Josiah Newman and Jacob L. Manges were also accepted at the evening session. The jury was not completed until 3 o'clock the next day, after fifty-seven jurors were called and examined. The following gentlemen composed the jury: Ephraim D. Miller, of Rockwood; Josiah Newman, of Summit; Jacob L. Manges, of Shade; Fred. F. Walker, of Summit; John W. Beck, of Southampton; John H. Hite, of Stoyestown; Wesley W. Davis, of Somerset Boro.; David J. Wolfersberger. of Rockwood; Jeremiah Henry, of Middlecreek; T. M. Black, of Confluence; C. W. Weigle, of Quemahoning; Adam J. Sembower, of Upper Turkeyfoot.

When the jury was completed the counsel for the defense asked leave to withdraw the motion for a severance, which was granted, and the defendants were ordered to be tried together.

District Attorney Biesecker opened the case before the jury, stating briefly what the Commonwealth would prove, and,

concluding, said: "If we can show you these facts, as I believe we can, with a great many others that I have not time to detail to you now, we shall ask you to convict the defendants in the manner and form as they stand indicted."

To any one who witnessed the scene in front of Judges Baer, Shaver and Pile as the trial progressed it was a painful sight. There was Joseph Nicely, father of seven children, his wife by his side; there was David Nicely, father of three children, and his wife, with a two-year-old child in her arms; and there was Anthony Nicely and his aged wife. What were the feelings of these people, sitting there in full view of the crowded audience, can never be told; and the eyes of many a spectator moistened as he contemplated the situation in its pathetic aspects. The blind figure of justice alone seemed unmoved.

The first witness called was Henry Rauch, Esq., who had made a plan of the Umberger dwelling and was called to prove it to be a correct representation.

ELLA STERN was sworn on behalf of the Commonwealth and examined by Mr. Cessna:

Q.—How old are you? A.—I am 20 years old.

Q.—Where were you living on the 27th of February last? A.—At Herman Umberger's.

Q.—How long had you been living there? A.—Nine months.

Q.—State to the Court and jury whether or not anybody came there that night, and how they came, and how many?

A.—On the 27th of February, in the evening, two fellows came on the porch and rapped at the door. Mr. Umberger told me to let them in, and I gave them chairs at the coal stove. They said they were cold, and Mr. Umberger told me to stir up the fire, and I stirred up the fire. Mr. Umberger said to them, "You are strangers;" and they said they were. They said they were constables from Bedford and had a search warrant for jewelry that was lost between Jennertown and Johnstown, and that they had to search every house till they found it. They said they had searched Gillian Friedline's and Frank Heiple's.

Q.—Were there such houses? A.—Yes, sir.

Q.—Did they sit a short or long time? A.—About half an hour.

Q.—Were you near to these men or far away? A.—I was near to them.

Q.—Do you know what he did with the warrant? A.—He clos

ed it up and put it into his pocket again.

Q.—What next? A.—He said he guessed he would have to search; and Mr. Umberger said, "You can, but you cannot find anything here."

Q.—Who lost the jewelry, did they say? A.—A man by the name of Moxham, a peddler.

Q.—What did Mr. Umberger do when they said they would have to search? A.—He told me to go out in the kitchen and get a light; I got it and lit it; it was a candle.

Q.—Who took the candle when you brought it in? A.—Mr. Umberger.

Q.—Where did he go? A.—Into the parlor.

Q.—Go on and state in your own way what they did? A.—Well, I lit the candle, and when I brought it in Mr. Umberger took it, and he and the little man went into the parlor, and looked around, and he said they did not find anything there; then they went into the bed-room; Mrs. Umberger and Nannie Horner were along, and the big man and I sat out in the dining-room; before the little man went into the parlor to search he said the tall man had hurt himself; the horses had run off and thrown him out; he did not know how it happened; I talked to the tall man as the search was made.

Q.—State to the Court and jury where the tall man was while they were in the other room? A.—The tall man and the little man were both at the stove before they went into the other room; when they went into the other room the tall man changed to the door where he could see into the bed-room and the parlor.

Q.—What else was done? A.—They searched round in there; I was in the dining-room all the time, and the big man, the tallest man, was in there too; and Mr. Umberger and Nannie Horner and Mrs. Umberger went into the bed-room, and they searched round there.

Q.—How long were they in there? A.—Not so long, a couple of minutes.

Q.—Then what happened? A.—The little man said he had forgotten to look under the bed, and Mr. Umberger and Nannie went in again with him, and they looked under the bed. I heard the little man tell Umberger that he was to pull out the upper drawer to see if there was a double drawer or double floor in it; I heard that.

Q.—Where were you when they came out the second time? A.

—In the dining-room. The second time they went in the tall man walked after them, and Mrs. Umberger and I were out; and Mr. Umberger told Nannie to come out in the dining room and tell Mrs. Umberger to come in.

Q.—Do you know whether or not Mr. Umberger had a pocket-book or two when he came out? A.—He had his hands closed up this way (witness crosses hands over chest); he had no coat on, but he had the pocketbooks in his vest pocket; the time of the second search the two men came out first, and then Mr. Umberger came out and had his hands folded up like this; and the little man walked up to him and demanded his money or his life; I was close to the kitchen door, and went out through the kitchen on to the porch; I heard a shot fired when I was on the porch; then I went to Friedline's.

Q.—How were these men dressed? A.—The tall man had on a pair of brown overalls with yellow stripes, and he had two handkerchiefs tied over his face, and he had on leather boots; he had the two handkerchiefs tied across his head.

Q.—State to the Court and jury how they were tied? A.—(Witness indicates how the handkerchiefs were tied and says :) I could see the nose, eyes and forehead; that was of the tallest man.

Q.—Were these defendants before 'Squire Rauch a short time after the murder for a hearing? A.—Yes, sir.

Q.—And were you there? A.—Yes, sir.

Q.—Did you see them there? A.—Yes, sir.

Q.—Were they befere Judge Baer for a hearing? A.—Yes, sir.

Q.—Did you see them there? A.—Yes, sir.

Q.—Have you seen them since? A.—Yes, sir; I saw them last evening.

Q.—Where? A.—In here.

Q.—Are they in this Court House now? A.—Yes, sir.

Q.—Show us where they are? A.—(Witness points to Joseph and David Nicely).

Q.—State to the Court and jury whether you heard them talk on the night of the robbery? A.—Yes, sir; I heard them talk.

Q.—State whether you have heard them talk since? A.—Yes, sir; at Rauch's, that day I heard them.

Q.—What was the color of the handkerchief that the tall man had on that night at the robbery? A.—It was a red handkerchief with white dots in it.

Q.—I think you said one of these gentlemen had on leather boots that night? A.—Yes, sir; that was the tall man.

Q.—Do you know whether the other man had on boots or shoes? A.—The little man had dark clothing on and gum boots, and a brown derby hat.

Q.—State whether or not the small man had anything on his face? A.—He had a mask on, or a gray beard.

Q.—State whether or not you have ever seen these hats since that night? A.—I have seen the hat that the small man wore.

Q.—State whether or not you had opportunity to see it on the night of the robbery? Yes, sir; I had.

The Court: How did you come to observe it? A.—There was a hole out of the rim of the hat.

Q.—State while you were sitting there whether you were before or behind him? A.—I sat behind him.

Q.—Did he have the hat on? A.—Yes, sir.

Q.—(Hands the witness a hat). Please look at that hat and state what you can say about it? A.—That is the hat he had on that night.

Q.—Where is the mark? A.—There; that mark was on the back of his head.

Q.—Which one had it on? A.—The short man.

Q.—Now take this bunch of handkerchiefs and state what you know about either one of them? A.—(Picks one out). This is the one the tall man had on that night. This is the only one I can recognize.

Mr. Koontz:—How was it tied up? A.—Across his mouth and back of his head; and the other one was tied over his head and under his chin.

Q.—Have you seen that handkerchief before or since the murder? A.—I saw it at Rauch's the day that John Rauch pulled it out of Dave Nicely's pocket.

Q.—Did you see it pulled out? A.—Yes, sir. And he asked me whether that was the handkerchief or one like it.

Q.—Look at those pants and tell us what you know about them? A.—They look like the pants the tall man had on that night.

Q.—Please look at these boots and say what you can about them? *A.—I cannot say whether* those are the leather boots that the tall *man wore that night.*

NANNIE HORNER.

Q.—Look at these gum boots? A.—I cannot tell them, but the little man had gum boots on.

Q.—State whether or not either of the men had overcoats on that night? A.—Both had.

Q.—Please look at this overcoat and see whether you can identify it? A.—The little man had on a dark overcoat.

Q.—(Handing witness another overcoat) And the tall man had that one on? A.—That is the overcoat. The tall man had an overcoat on like this.

Miss Stern was cross-examined by Mr. Coffroth. She was followed by Mrs. Umberger, whose testimony we have already given.

NANNIE HORNER, the ten-year-old grand-daughter of Mrs. Umberger corroborated the testimony given by Miss Stern in every essential feature, and in addition she positively identified the gray overcoat worn by the tall man by a patch on the side of the coat. She was examined at considerable length and subjected to a long and severe cross-examination, but did not deviate a hair-breadth in her recital of the details of her grand-father's tragic death.

During the cross-examination of Nannie Horner the following colloquy between the counsel for the defense and Nannie shows the extraordinary precocity of the little witness.

Mr. Coffroth—(Showing black coat). Is this the coat you saw at Kooser's office? A.—Yes, sir.

Q.—Has this coat a patch on? A.—I don't know.

Q.—Then it was a dark coat you saw there? A.—Yes, sir.

Q.—Where did you see the light coat? A.—At our place that evening

Q.—Where else? A.—I don't know whether I saw it any place else.

Q.—Didn't they show it to you here at Somerset on last Monday? A.—No, sir; they just showed me the black coat, and the pants.

Q.—Who had this coat on (the black one)? A.—The little man.

Q.—Is there any mark on this coat? A.—No, sir; but I think it is the coat too.

Q.—And it had no mark of any kind? A.—It had button holes tore anyways.

Q.—Were they torn clear out, or just worn from use? A.—Not clear out.

Q.—Was there anything the matter with this coat; were

buttons on or off the light coat? A.—The buttons were off—one or two buttons.

Q.—What kind of a patch was on it? A.—A little brown patch.

Q.—(Holding the lined side towards witness). Where abouts

DAVID NICELY.

was it? A.—It was on the side of the coat.

Q.—(Shows one side of the outside of coat). That is the side of

the coat? A.—Well, ain't it got another side?

Q.—(Shows other side). A.—There is a patch, right down there.

Q.—(Showing another patch). There is another patch? A.—That other is the one, though.

Q.—There is another patch on the coat? A.—I saw it just a bit ago that there is another one on it. (Witness finds patch and says): That's it!

DR. B. F. WALKER was next called on behalf of the Commonwealth and testified to the wounds and described the bullet holes in the body of Herman Umberger, and said the wounds were fatal and caused Mr. Umberger's death. He also said the bullets found in Mr. Umberger's body and in the walls of the room were centre-fire bullets.

HENRY RAUCH, ESQ., was recalled by the Commonwealth and testified that he was justice of the peace and held the inquest on the body of Herman Umberger, and described the bullet holes in the walls and produced two of the bullets.

Hammer Cauffiel, Rufus Rauch, Rufus Shaffer and Albert Hoffman were next called and testified to the tracks leading from the Umberger house across the fields and along the turnpike in the direction of Ligonier as far as Burnt Cabin.

MR. JOHN A. KIMMEL, of Ligonier township, Westmoreland county, testified that David Nicely had worked for him on Monday, the 25th of February; that he requested him to work next day and David said he could not help him because he was going away.

MR. HAMILTON SMITH, of Ligonier, testified to having seen David Nicely in Ligonier on February 27, walking in the direction of Somerset county. He was corroborated by Mr. Seal Burnett.

MR. LEWIS BEANER, of Fairfield, Westmoreland county, testified to having met David Nicely on the pike near Burnt Cabin in the afternoon of February 27. He saw another man whom he did not recognize walk across the pike and dodge into some bushes. Mr. Edward McCracken, of Fairfield, also testified that he had met David Nicely at the time Mr. Beaner saw him.

MR. CHARLES VANNEAR was next called on behalf of the Commonwealth and examined by Mr. Cessna:

Q.—Where do you live? A.—In Ligonier.

Q.—Do you know Joseph and David Nicely? A.—I do.

Q.—Where were you on the 27th of last February? A.—I w

working on the far side of Laurel Hill, getting out timber on the west side.

Q.—Were you at the turnpike that day? A.—We were pretty close to it towards evening.

Q.—You say you know these gentlemen? A.—Yes, sir.

Q.—How long have you known Joseph Nicely? A.—I have known Joseph for twelve years about. He was secretary of an insurance company over there.

Q.—How long have you known David? A,—About seven or eight years.

Q.—Did you see them on the 27th of February last? A.—I saw David and Joseph Nicely pass up the pike that afternoon between 4:30 and 5 o'clock.

Q.—How close were you to them? A.—About 115 feet; we measured it afterward with a surveyor's chain.

Q.—Was anybody with them? A.—No, sir.

Q.—Was anybody with you when you saw them? Yes, sir; my son Lewis.

Q.—Which way were they coming or going? A.—They were coming east up the mountain.

Q.—Where were you? A.—We were below the pike sawing the but of a log, and I was on my knees with my face towards the pike.

Q.—Do you know how they were dressed? A.—The way they usually are when they come to town.

Q.—Did they have overcoats on? A.—Yes, sir.

Q.—Did you know these men? A.—Yes, sir; I knew them and I think they knew that I knew them, too.

Q.—Can you give any reason for that remark you made, from any fact? What did they do as they passed along? A.—They were looking at me, and when they got opposite to me I quit sawing and got on my feet and was going to speak to them, and they turned their heads, crossing the pike and passed up the mountain.

Q.—How fast did they go? A.—As fast as men usually can walk on the mountain.

Q.—Are you able to describe the hats or caps they wore? A.—I think Joe had a brown hat on, but I am not positive; but one had a cap and the other a hat.

Q.—Could you identify the hat or cap? A.—I could not identify them because I was not close enough.

Q.—How far was your son away? A.—The same distance that I was; there was just a log between us; the log was lying up and down the hill, and he was on one side and I on the other.

Q.—Was the ground of the turnpike higher up than you? A.—Yes, sir.

MR. LEWIS VANNEAR, whose testimony at the *habeas corpus* hearing we have already given, was next called on behalf of the Commonwealth.

MR. JOHN FRIEDLINE, of Jenner, testified that he saw two men walking through the fields in the direction of Umberger's on the evening of the 27th of February, but he could not identify them further than that one man was taller than the other.

MRS. MARY WALTER testified that she saw two men coming down the turnpike on the west side of the mountain near Haines' church on the evening of the 27th of February, and recognized the prisoners as the men she had seen.

MRS. SUSAN REAM, of Jennertown, testified that she had seen Joseph Nicely turn the corner of the turnpike and go down the Johnstown turnpike toward Umberger's in a buggy some time during the month of August, 1888.

MR. FRANK HEIPLE, of Jenner, testified that he had examined the tracks leading away from Umberger's house; that one was the impression of a leather boot and the other of a rubber boot.

THE POCKETBOOK.

WILLIAM THOMAS, of Ligonier, was called on behalf of the Commonwealth and testified as follows:—On the 5th of last March I was in Ligonier and drove a two horse carriage over to 'Squire Rauch's; David Nicely, Rufus Shaffer and Hammer Cauffiel were in the carriage with me; passed through Laughlinstown; Cauffiel and I got out and went into the store and warmed; then I came out and Shaffer went in to warm; when they were in David Nicely and I were alone in the carriage; Nicely gave me a pocketbook which he said had some money and papers in and that I should take it back with me and give it to Watson Menoher; I put the pocketbook in my inside vest pocket; I was at the hearing at Rauch's; David Nicely was there; I had the pocketbook in my pocket at the time; Shaffer went back with me to Ligonier; on th

way back we met George Nicely and Watson Menoher on the mountain; they were in a buggy and we stopped; I gave the pocketbook that was given me by Dave Nicely to Watson Menoher; I did not examine the pocketbook as to what was in it.

MR. WATSON MENOHER, of Ligonier, testified :—I am related to David Nicely; am married to David and Joe's sister; know William Thomas; came across the mountain on the 5th of March with George Nicely; met William Thomas on the mountain; he gave me a pocketbook; there was $100 in the pocketbook; I took it to Ligonier and put it in the safe; afterwards took it up to my father-in-law's and gave it to my wife; in about two days afterwards I took the money up and gave it to Mr. A. A. Nicely; there was one twenty and one ten dollar bill among the money that I am sure of; I gave the pocketbook to Mrs. Menoher; her mother and sister were present when I gave it to him.

MR. JOHN O. RAUCH, sworn : He said: I live in Jennertown; Henry Rauch is my father; he is justice of the peace and I am constable of Jennertown borough; I am 32 years old; I arrested the prisoners in March last at their homes in Westmoreland county; they live in the Ligonier Valley, about two and a-half or three miles from the town of Ligonier; their houses are only a short distance apart; Rufus Shaffer, Hammer Cauffiel and Martin O'Connor were with me when I arrested them; I arrested Dave Nicely first; the first thing that I found that was identified was a pair of brown overalls; [Here the witness took the satchels and bundles and as he spoke of each article found produced it;] these are the overalls; I found them in Dave Nicely's house; the second thing I found at Dave Nicely's house was a pair of leather boots; here they are; I marked them at the time; the next thing I found was two red handkerchiefs with white spots; here they are; I know they are the ones I found as I have had them in my possession ever since; the next thing that I got hold of was this gray overcoat; found it in David Nicely's house; it is the lighter of the two overcoats; this overcoat is just as it was when I got it; David Nicely wore it when we brought him over the mountain to the hearing at Jenner; it was cold and we put it on him; after the hearing I brought him to Somerset; he wore the coat to Somerset where I took it and gave it into the hands of the Sheriff; I never saw it again 'till I got it from the Sheriff on Friday, the day this trial was begun; here is a brown cap that was found at Dave Nicely's; (Counsel for the de-

fense objected to cap being shown as it was not found by witness. Court sustains objection.)

The witness resumes: Here are some papers I got there that day; that is all we found at David Nicely's the day of the arrest; we next went to Joe's house; I left Hammer Cauffiel handcuffed to Dave when I went down to Joe's; old man Nicely went with me; we went to the house and Joe's wife told us he was down at the blacksmith shop; on the way to the shop we met him and I placed him under arrest; we went back to the house and I kept Joe in one room while the others searched the house; the first thing found there was this brown hat; I found it on Joe's head when I arrested him; this pocketbook was found there; these 32-centre-fire cartridges were found in Joe's house; there are nine of them; they were found up stairs; I only searched his person to find if he had a revolver or knife; found none; found these

GUM BOOTS

on him when I arrested him; here are the pants he had on the day we arrested him; here is an overcoat that was found there; we also found a 32-calibre, rim-fire revolver at Joe Nicely's; it was rusty, not in trim for shooting; here it is. Went back to Dave Nicely's, but did not find anything more; brought them over to Ligonier that evening and kept them at National Hotel all night of March 4th, and brought them to Jennertown on Tuesday; brought them to my father's office; found a handkerchief on David Nicely; he had it in his right hip pocket: made search after the examination was over; there was no conversation between him and Ella Stern until the handkerchief was found; had the other handkerchiefs that were produced at the hearing; the hearing had closed when I found the handkerchief; just as I pulled it out Ella Stern says, "that's the handkerchief," and Dave Nicely reached for it and attempted to grab it back; found $2.10 in his pocket: a two-dollar bill and ten cents in silver: the handkerchief has been in my possession ever since; it was the one exhibited to Ella Stern and Nannie Horner in the court room; left the gray overcoat in the possession of the Sheriff on the night of the 5th of March; went back to old Mr. Nicely's a week or so later to look for the pocketbook; was there when it was found: (Pocketbook was shown witness and he identified it by a number of marks that were shown to the jury); we got the pocketbook on March 21st; the sale at Umberger's was on March 20th; the hearing at Judge Baer's was on the 28th of March

did not notice patch on the overcoat; the coat was in the same condition when I gave it to the Sheriff as it is now; it was in the same condition when I gave it to him as when I got it. (Witness exhibited some papers which were identified by him as being found in the pocketbook taken out of the book-case at Joe Nicely's).

MR. MARTIN O'CONNOR, sworn :—Helped to make arrest; went first to David Nicely's; found these boots, overalls, handkerchiefs and overcoat there; then went to Joseph's and found this overcoat; couldn't swear I saw the hat there, but saw it when Rauch brought the hat at an hotel in Ligonier that night; saw Joe Nicely when arrested and he had a Derby hat on; I went along when Rauch arrested Joe; he had a hat on, but can't say this is the hat; found a 32-calibre, rim-fire revolver and some 32-calibre, centre-fire cartridges; saw this cap at Dave Nicely's.

MR. JOSEPH AMBROSE, sworn :—Live in Ligonier; was constable February last; assisted in searching the houses of David and Joseph Nicely by authority of search warrant; found dark-lantern; (which he showed), put the tag on; don't recollect anything else being found; at Joe's found this 32-calibre revolver; is still loaded; it is a rim-fire one; the muzzle was black as though recently fired; they differ, one strikes rim, the other centre of cartridge; cartridges were taken out—five all together; three fresh ones put in; they were handed to the stenographer; found the revolver up stairs in Joe's stand drawer; was at the house of 'Squire Rauch; saw handkerchief taken out of Dave's pocket; heard conversation between Dave and Ella Stern; tied handkerchief around his face and he asked if this is the handkerchief and she said it was, but that another one tied around was not.

MR. SYLVESTER FERRY, sworn :—Live in Ligonier township, Westmoreland county; know Joseph Nicely; saw him have a centre-fire pistol last fall; can't tell exact date; (evidence objected to by counsel for defendants. Admitted.)

I saw him buy two revolvers from Edward Beck in Greensburg last fall; he is a jeweler; can't tell you the name of revolver; they were five shots, centre-fire; it was the time of the Greensburg fair, on Thursday; I saw one of the pistols in his possession last fall when I helped him butcher; think it was the one you have there; this was several months after the fair.

MR. JOHN SHEDRON, sworn :—Live in Westmoreland county; know defendants; am a brother-in-law to Joe; on 27th of last

CONSTABLE JOHN O. RAUCH.

February, was at David's house; got there about 1 o'clock in the day; he wasn't at home; my wife owns the property in which Dave lives; I was there about two hours; didn't see David while I was there.

Q.—What did you go there for?

(Objected to by counsel for defense. Offer reduced to writing and jury sent out of room 'till argument on motion made. Objection sustained and jury brought back to court.)

Cross-examined—I was in the kitchen, but in no other part of the house that day.

Re-direct—I made no efforts, only by inquiry to find him.

MR. M. R. McMILLEN, sworn :—I had the custody of this coat; am deputy sheriff; got the coat in my possession the evening the Nicelys were brought to jail; it has been in my possession since, up until Friday evening when I gave it to Constable Rauch; while in my possession I showed it to no one but the Sheriff and his family.

MR. C. H. CAMP, sworn :—Live in Pittsburg; am connected with the Gilkinson detective agency; was at Umberger's attending a sale on the 20th of March; that evening I went to Ligonier; on April 21st I went to the house of Anthony Nicely with John Rauch and Rufus Shaffer; got this pocketbook there; Mrs. Nicely brought it down stairs; this is the pocketbook; I have had it in my possession since; it has several marks on it; I asked for the money from Mr. Nicely; I got no money; there was no money in the pocketbook; John Rauch, Rufus Shaffer, Mr. Nicely, Mrs. Nicely, Mrs. Menoher, a married daughter, and a single daughter, were present when I got the pocketbook.

The pocketbook in evidence was then identified as the property of Herman Umberger by the following witnesses: Adam Friedline, Reuben Horner, William Kline, Noah Horner, Mrs. Elizabeth Horner and Perry Umberger. Mr. Umberger said this is my brother's pocketbook; I have seen it one hundred times, more or less, in his possession; when we travelled together he carried it in his boot leg; I saw the pocketbook before it had that mark on (pointing out the white mark on the corner) and afterwards; then I knew it by the eyelet, the way it is worn, the color, the shape and the creases in it.

MRS. WATSON MENOHER, sworn :—Am a sister of the Nicely boys; remember the day of the arrest; my husband gave me a pocketbook that week sometime; laid it on the table; did not see

taken away; was there when the officers got the same pocketbook that had been given to me by Mr. Menoher. (The pocketbook was given to the Court.)

This closed the case of the Commonwealth, at 9 o'clock, Tuesday morning, June 4th.

THE DEFENSE.

Mr. Ruppel opened the case before the jury. He said the defense would show that the tracks in the snow could not have been made by rubber boots; that the defendants were the victims of a conspiracy. The defense would show that the testimony of the Vannears and other witnesses for the Commonwealth was not reliable, and that the coat and hat had been doctored for the trial; also that the pocketbook is not the one taken from the Nicelys. He said the defendants themselves would go on the stand and give the most satisfactory account of their whereabouts on the 27th of February, and that they would be unquestionably corroborated by the best of credible witnesses. The defense would, he said, prove an *alibi.*

The defense set up an *alibi.* Joseph and David Nicely took the witness stand and each testified that he had been at home all day of February 27th.

The testimony of Joseph Nicely was corroborated by Gilbert Ross, Aaron Marks, John Koontz, Lorenzo Nicely, David A. Geeting, Harriet Nicely, Elizabeth Nicely, Anthony Nicely, Hettie Nicely, John Brown and others. each of whom testified to having seen the defendant at home or in the neighborhood at various hours of the day.

The testimony of David Nicely was corroborated by Lewis Paine and others.

DR. ASHCOM testified that Charles Vannear had told him that the men going up the mountain were not the Nicelys, but that they looked more like Hoffman and Koontz.

MR. WILLIAM THOMAS testified that he thought the pocketbook in evidence was not the pocketbook he had given to Watson Menoher; but he was not sure.

MR. WATSON MENOHER testified positively that it was not the pocketbook.

MR. GEORGE NICELY testified that he was present when William Thomas handed a pocketbook to Watson Menoher on March 5th, 1889; saw the pocketbook the next day at the National Hotel in Ligonier, and that the pocketbook in evidence was not the pocketbook given to Mr. Menoher.

Mr. Nicely also testified to having examined the place where the Vannears said they saw Joseph and David Nicely going up the turnpike, and said it was impossible to recognize any person going up the turnpike from the point of observation occupied by the Vannears.

MRS. ELIZABETH NICELY testified that the pocketbook in evidence was not the one she had given to the officers.

MR. A. A. NICELY, sworn :—I was there when the pocketbook was handed to the officers; I think it was Dave's pocketbook. (The witness was here shown the pocketbook exhibited in court and said it was not Dave's pocketbook.) This is not the pocketbook handed to the officers; they promised to bring it back; said they wanted to show it to William Thomas to see whether it was the pocketbook that Menoher handed over to him; said they would then give it to Watson Menoher to bring back; they did not return it.

MRS. CATHARINE NICELY testified that her husband (David) had been at home all day on February 27th, and that the patches on David's overcoat were sewed on by her on Thursday, February 28th.

DR. HENRY BRUBAKER, of Somerset, testified to the physical condition of David Nicely; that the defendant was afflicted with organic disease of the heart.

MR. JAMES RICHARDSON and Albert C. Brenizer testified that Lewis Vannear had told him that he had seen two men go up the mountain on the 27th of February, but that he could only see the tops of their heads and could not recognize them.

MR. JOHN KOONTZ testified that Charles Vannear had told him on the morning of February 28th that he had not seen any person going up the mountain on the previous day.

Messrs. Noah Marker, J. M. Hamilton, W. M. McIlvane and others gave evidence of a similar character.

JOHN A. KAYLOR, sworn :—I measured them at different points; the gum boot tracks measured in length 10¼ inches and the leather boot or shoe was 11 inches long; width of the ball of the foot 3¾ inches; toe about 3½ inches; the heel measured 2¼ by

inches; the rise of the heel at the instep three-fourths inch; the gum boots had been worn considerable; I could tell that by the track; I took particular notice of the tracks made by the leather boot or shoe; there were two rows of nails run around the outer edge of the heel; right in tne centre there were four nails in diamond shape. (Witness was shown the gum and the leather boots exhibited in the court and said the tracks he had measured could not have been made by those boots.)

[Mr. Kaylor's character for truth was subsequently assailed by the testimony of ten witnesses.]

Mr. Kaylor was the last important witness called by the defense. Numerous witnesses were called in rebuttal and sur-rebuttal. Among those called by the Commonwealth in rebuttal were Henry Rauch, Esq., and Mr. N. B. Critchfield, who had gone over to the Sand Flat on the previous day and made careful measurement of the distance from the turnpike to the spot where Charles and Lewis Vannear stood when they saw Joseph and David Nicely going up the turnpike on the afternoon of February 27. Some of the witnesses for the defense testified that the Messrs. Vannear could not have seen the defendants going up the road from the place they had said they were. For this reason counsel for the Commonwealth had sent Messrs. Rauch and Critchfield over to Sand Flat while the trial was in progress. Messrs. Rauch and Critchfield tested the matter and testified that they could see each other standing or walking on the turnpike, from the point where the Vannears indicated they had seen Joseph and David Nicely going up the turnpike.

Counsel for the defense rested their case at noon on Thursday, June 6th.

ARGUMENTS BY COUNSEL.

Unfortunately, none of the able and eloquent arguments to the jury were taken by the stenographers, save that of Mr. Kooser, of which we are able to present only an abstract, as published in the "Daily Herald," of June 10:

Mr. Kooser began by congratulating the jurors and himself that *the labors of several* weeks were drawing to a close; yet he must *sk the jury to* indulge him and others patiently awhile longer;

congratulated the defense and the commonwealth that they had succeeded in securing twelve jurors of a high degree of intelligence, of undoubted courage, who would be able to render a verdict under the evidence and charge of Court; he agreed with the counsel for defense in his opening, when he stated it was an important trial—perhaps the most important ever tried in the county; that the name of Umberger was now known all over the land, because of the peculiar brutality of the murder, and the magnitude of the sum of money secured by the murderers and robbers; that while the duties were grave and responsible they would ever recollect their connection with this historic case. He then defined murder at common law; read the statute regulating the degrees of murder, conceded the position taken by the counsel for the defense that the burden of the proof was on the Commonwealth throughout the trial, and that the defendants must be acquitted if there was a reasonable doubt of their guilt; defined what was meant by a reasonable doubt and claimed that the force of the expression laid on the word *reasonable*, a doubt with a reason behind it. He then adverted to the testimony; began by picturing the peaceful scenes at the house on the 27th of February; farmer Umberger, old and sick, with the accumulations of a lifetime, some $15,000 or $20,000 in his house; with his wife and grand child and servant gathered around the evening lamp; no thought of the assassin that lurked about; he then shifted the scene to Ligonier. Hamilton Smith, a witness, saw David Nicely wearing a gray overcoat and cap wending his way Eastward beyond the point at which he should have turned off to get to his home; found him next upon the mountain where he is identified by witnesses Beener and McCracken who first saw some other party cross the road and pass into the woods; these witnesses say it was David Nicely; further on they passed Charles and Lewis Vannear who knew both parties well and say they were Joseph and David Nicely. Dave with a cap and Joe with a brown hat on; further on they passed Mrs. Walter on the pike who recognized them and says they are the men; further on they passed John Friedline who says there was a short man and a tall man resembling these; further on at the hill above Umberger's is found the remains of a lunch which pointed *unmistakably* to the fact that who ever murdered Herman Umberger came a long distance and had brought his lunch with him *This* was corroborated by the track leading down the hill into t

house. He then detailed the scenes at the search of the house; the the production of the search warrant, the sudden demand, "Your money or your life," the sudden firing of the shots, the flight of Nannie Horner and Ella Stern, the faithful wife pulling the bell to alarm the neighbors, the plunging forward of Herman Umberger from the sitting room into the kitchen, dead at the feet of his wife, and the flight of the prisoners. He then pointed out that after their flight a lamp stood upon the table without a chimney and the broken fragments of the chimney lay upon the floor five to ten feet from the table, indicating that the lamp had been used to find the pocketbook that had fallen from the inside of the open vest of Herman Umberger before he was struck by the fatal bullet. He then pointed out that at least half an hour's time was spent in this house by these people before they commenced operations, during which time there was not a bit of excitement, giving Mrs. Umberger, Ella Stern and Nannie Horner every opportunity to carefully scrutinize the dress, form, features, shape, etc., of the men. Next took up their clothing and called attention to the particularity with which Ella Stern identified the hat, with a piece out of the rim, the gray overcoat, the leather boots and the gum boots. How Nannie Horner identified the same articles and in addition located the brown patch on the gray overcoat. He then pointed out that after the arrest the singular fact that whilst Dave Nicely was the tall man and Joe the short one, that the gray overcoat with the brown patch, worn by the tall man, was found at Dave Nicely's and the hat with the piece out of the rim was found at Joe Nicely's; that the tell-tale handkerchief with the red spots on was found on Dave Nicely; how Ella Stern and Nannie Horner testified it was tied and the further damaging fact that the handkerchief, when found, came out of his pocket. He then pointed out the fact that whilst Umberger was shown to have been killed by a bullet from a 32-calibre revolver, centre-fire, no revolver of centre-fire was found in Joe Nicely's possession, yet at the time of his arrest nine centre-fire cartridges were found in his possession. He argued that from the possession of the centre-fire cartridges that Joe Nicely must have had a centre-fire revolver that was concealed somewhere with the money; he then told how Rauch, in the presence of Ambrose, had taken the hat from a nail at Joe Nicely's house, and the piece was then out of it; then told how the position of the defense conceded that the pocketbook was Umberger's, and denied

that there could have been any motive in the world for anybody to commit the fraud that the defense is now compelled to urge; showed how Thomas could not say it was, or was not the pocketbook; how brother-in-law Menoher was able to say it was not the pocketbook, and that brother-in-law Menoher could not ask to be believed by a jury, because he had separated the book and the money, and concealed the knowledge of the money from the officers, and admitted afterwards that he lied about it; he then declared that the defense rested upon an *alibi* set up by the Nicely family, and a lot of unreliable witnesses and unknown men; demanded to know why none of the responsible citizens had seen Joseph or David Nicely on the 27th of February; why only such men as Aaron Marks, David Geeting, Lewis Paine and John Koontz, could undertake to speak for them; told how these men were contradicted by numerous substantial farmers in the valley, to whom they had told stories at variance with their testimony on the stand; how all of them had stated it was Thursday, the 28th, they saw the defendants and not Wednesday, the 27th, and how $15,000 or $20,000 in money could be used as an engine to manipulate the character of the witnesses. He then paid his respects to the Nicely family and insisted that the awful pressure of the death penalty to two of them and the prospect of the concealment of $15,000 or $20,000 on the other hand were motives that could be expected to swear the lot of them. Demanded to know why brother-in-law Barron was not put upon the stand when David had testified that he was at Barron's on the 27th. He then argued that the physician had not said that Dave Nicely was incapable of the execution of such a trip; admitted that while the doctor might perchance know more about the inside of a man than himself or the jury, yet there were twelve pairs of eyes upon the jury as competent to see and measure the outside of a man as Dr. Brubaker or any other doctor, and submitted to the jury if there was any such developments over the heart of Dave Nicely as Dr. Brubaker seemed to think. He then argued that Kimmel, Serena and others had worked with Dave Nicely and knew that he was able to do a serious and competent day's work; showed how completely witness Kaylor was blasted and argued that Paine, Marks, Koontz and Geeting were of a similar pattern and their testimony ought to weigh as nothing before the jury. He then asked that for the interests of the 35,000 to 40,000 inhabitants of this county who

interests they were selected to protect, that, whilst to give the prisoners the benefit of all reasonable doubt, yet if the evidence satisfied them beyond a reasonable doubt of the guilt of the defendants as it ought to satisfy any reasonable mind, that they be courageous and faithful, leaving the consequences where they belonged.

Hon. W. H. Koontz followed Mr. Kooser with one of the most eloquent and effective pleas ever delivered to a jury in Somerset county. It is to be regretted that Mr. Koontz's argument cannot be here reproduced; but there is no record of it anywhere in existence. He began with a brief historical sketch of the laws as they have came down to us from the English-speaking race; he elaborated the theory of criminal law that no man is to be adjudged guilty until his guilt is proved beyond a reasonable doubt. This, he said, has been the established English custom for centuries past, and has been held in view as steadily as is the North Star by the mariner. His theory of the innocence of the prisoners at the bar, under the law, was most ingenious, and but for conclusive evidence against the defendants, would have prevailed with the jury. Mr. Koontz spoke two hours and a-half. He was followed by Mr. Coffroth, who spoke fully three hours.

Hon. John Cessna, of Bedford, made the closing argument. The speech of Mr. Cessna was a powerful arraignment of the prisoners. His irresistible logic broke down every barrier that the defense had set up; and when he had finished there was little doubt in the minds of his audience that the jury would find the defendants guilty.

JUDGE BAER'S CHARGE TO THE JURY.

Gentlemen of the Jury:

A long and necessarily tedious trial is nearing its close, and soon the whole responsibility of a true verdict will rest on you. You have patiently and with commendable attention listened to the testimony as detailed by the witnesses of both the Commonwealth and the prisoners at the bar, and have, I am sure, given due consideration to the able argument of the learned counsel on the material facts in evidence.

The facts you take from the evidence as given by the witnesses on the stand. The arguments of the counsel do not make facts; but they are a discussion of the evidence, and of the materiality and credibility of it as bearing upon the guilt or innocence of the

EX-DEPUTY SHERIFF MILTON MCMILLEN.

prisoners, and are entitled to due consideration; nevertheless, the jury cannot surrender its own judgment fairly formed on all the material facts and adopt the views of counsel. The solemnity with which you were chosen from the body of the qualified electors of the county and impaneled as able, sober, intelligent and judicious men, may well inspire you with awe, in view of the great responsibility put upon you.

You were sworn to well and truly try and *true* deliverance make between the Commonwealth of Pennsylvania and the prisoners you have in charge, and a *true* verdict give according to the law and the evidence. You are not to simply find a verdict, but your duty is to find a true verdict according to the law and evidence.

The law you receive from the Court, and as to it the Judge is responsible and alone responsible if you act upon the law as he gives it to you.

The evidence is wholly for your consideration, and from the material evidence in the case, as given by credible witnesses, you are to find the facts, and you alone are responsible for a true and faithful finding of the facts. I repeat, your duty is to find a verdict on the law and the evidence produced in the case. You are not responsible for the law laid down, nor for the facts established by the testimony. If the evidence lead the jury, in the exercise of a sound judgment, to a verdict of guilty there it is your duty to go without stopping to inquire what consequences follow. You, as jurors, have nothing to do with consequences, and the fear of any possible consequences should not for a moment mislead you to rendering a verdict which your judgment does not approve. In like manner, if the law and the facts lead you in the exercise of a sound judgment to a verdict of not guilty, there it will be your duty to go, no matter what consequences follow. You should arrive at a conclusion, as your oath implies, on all the evidence in the case.

Grave and arduous as your duties seem, the task of finding a true verdict from the evidence under the law as given you is not a difficult one, if you will constantly keep in mind that you must arrive at any conclusion you come to by a due and careful consideration of the evidence in the case under such instructions as to the law as have been given you, free and unaffected by public clamor, private sympathy or feeling, and in total disregard of anything you have heard or read in or out of court before you were sworn as jurors in this case, and that you act as judicious men without fear, favor or affection, looking nowhere but to the law and the evidence. For on these and these alone can a true verdict be based.

To find a verdict otherwise than on the law and the evidence would be a verdict indeed, but your consciences would not be easy. Looked upon in a proper light, the task imposed upon jurors is not so severe.

The jury heard such witnesses as the Court deemed competent. *Endeavor to* remember what they said; observe the witnesses or

the stand—their demeanor and manner of testifying, and whether candid or biased. Observe whether their statements are consistent or contradictory; whether contradicted in material matters by others, and whether they have been assailed or their credibility impeached; and then, looking at the witnesses, including the prisoners as witnesses, their interest in the issue, their testimony and manner on the stand, and the consistency of it; the jury determines the amount of credibility that should be given to each witness.

Then, giving due consideration to the testimony of all credible witnesses for and against the prisoners, and due regard to the discussion of the material evidence the jury find what are the facts proven, and, having found the facts, they consider them in connection with the law as laid down by the Court, and find a verdict in accordance with the law and evidence. If the juror has been careful to observe the evidence and the law, the result or conclusion he arrives at should not disturb him, whatever conclusion reasonable, naturally, fairly and truly follows from the law, and the proven facts should be the verdict, whether that be a verdict of guilty or not guilty. Peace of conscience would only be disturbed by finding a verdict contrary to, or in defiance of, the law and the evidence. The verdict, whatever it may be, should be found upon due and careful consideration of all the evidence in the light of the law laid down, and should be entirely free from the emotions of fear, favor, affection, sympathy, bias, prejudice, hatred, ill-feeling or revenge, and should be in total disregard of public sentiment or feeling.

A human life has been taken. Herman Umberger, a former citizen of this county, is no more. He was suddenly taken without warning by persons, whoever they were, that did not fear God, but openly and boldly served the devil and imbued their hands in his blood at the hazard of their souls.

Sad as is everything connected with that death, we must not let our sympathy for the bereaved ones, pity for the dead or indignation against the felons sway us from the clear path of duty. Our duty is in the line of justice and not of vengeance. The laws of the land and the laws of God have been ruthlessly violated. The rights of personal liberty and security have been invaded and a life has been taken.

For taking this life the prisoners at the bar are on trial, and on this jury devolves the duty of ascertaining *what is* the offense, and are the prisoners the offenders. Whatever the offense may be found to be, if the prisoners are not the offenders they will be set free; if they are found to be the offenders, the majesty of the law must be maintained and crime punished.

The indictment charges the prisoners at the bar with the offense of murder.

Such an indictment, if the offense be proved, would sustain a conviction for murder of the first degree, murder of the second *degree or manslaughter, as the* facts and circumstances in the case *might warrant.*

It becomes necessary, therefore, to define the several offenses or grades of offenses, so you may not err in the conclusion you arrive at, if you find an offense was committed.

At common law, murder is described to be where a person of sound memory and discretion unlawfully kills any reasonable creature in being and under the peace of the Commonwealth, with malice aforethought, expressed or implied.

It is alleged on the part of the Commonwealth that Herman Umberger, late of this county, was a reasonable creature in being and in the peace of the Commonwealth, on the 27th day of February last, and was then killed. If you find this to be so, the next question is, who killed him? The Commonwealth charges the offense upon the prisoners at the bar.

The burden is upon the Commonwealth to satisfy you beyond a reasonable doubt, by evidence produced, that the prisoners killed him; and must also, by like proof, show that they killed him with malice aforethought, either expressed or implied, in order to convict of the offense of murder.

Every killing is not necessarily murder; but every killing of man by man is homicide.

Homicide may be felonious, excusable or justifiable. We have to do in this case with felonious homicide; so the indictment charges the offense, designating it in the indictment as murder; and on this indictment, if a proper case be established to satisfy a jury of the offense, and the persons who committed it, there can be a finding of murder of the first degree or murder of the second degree or manslaughter.

The distinguishing criterion of murder is that of malice aforethought. Manslaughter is the unlawful killing of another without malice expressed or implied. There must be an unlawful homicide to constitute either murder or manslaughter. The distinction between the two grades is that an unlawful homicide with *malice aforethought*, expressed or implied, is *murder;* whereas, an unlawful homicide without *malice aforethought* is manslaughter.

Keeping this distinction in mind, you inquire whether the offense committed was murder or manslaughter. Murder at common law embraces cases where no intent to kill existed; but where the state or frame of mind, termed malice, in its legal sense, prevailed; and it includes all unlawful killing under circumstances of depravity of heart and a desperation of mind regardless of social duty, but where no intention to kill exists.

I have already said the distinguishing criterion of murder is malice aforethought. A particular ill-will, a spite or a grudge is ordinarily understood as malice, but malice, as it appears in the definition of murder, is a legal term; it comprehends not only ill-will, but every case where there is a wickedness of disposition, hardness of heart, cruelty, recklessness of consequences, and a mind regardless of social duty.

Under all the evidence and circumstances surrounding the killing, your first inquiry should be, was the killing murder?

The testimony of Ella Stearn, Mrs. Umberger, Nannie Horner

and Dr. Walker, if believed, shows that Umberger, on the night of the 27th of February last, was killed by two men, who entered his dwelling by night for the purpose of committing a felony, and that he was both robbed of a large sum of money and killed by means of a deadly weapon used upon his person at a vital part, and his dead body was identified and death from the gun shot wound established, if the evidence is believed.

The Commonwealth alleges the killing as testified to by the witnesses named and the defense do not deny that Umberger was both robbed and killed by some persons. If the jury from all the evidence find the homicide was not committed in self-defense, as to which no evidence appears, or not by misadventure or upon heat and passion, upon a sudden quarrel, or by accident or mistake, as to which no evidence appears, but find that life was cruelly, wilfully, wickedly and recklessly taken in total disregard of social duty and when attempting to commit robbery, after demanding "your money or your life," they will be warranted in finding that the homicide was murder.

There is no evidence in the case to bring it within the definition of manslaughter, as we view the evidence. If you could on the evidence find it to be an unlawful homicide without malice aforethought, it would be manslaughter. If you find it to be murder, was it of the first or the second degree?

The laws of Pennsylvania distinguish murder in two degrees; murder of the first and murder of the second degree; murder of the first degree is where a deliberate intention to kill exists; murder in the second degree is where no intent to kill exists. The jury under the statute, if they find a verdict of guilty of murder, must find and ascertain whether it be murder in the first or in the second degree. The 74th section of the statute of 31st March, 1860, reads:

"All murder which shall be perpetrated by means of poison, or by lying in wait or by any other kind of willful, deliberate and premeditated killing, or which shall be committed in the perpetration of, or an attempt to perpetrate any arson, rape, robbery or burglary, shall be deemed murder of the first degree, and all other kinds of murder shall be deemed murder of the second degree, and the jury before which any person indicted for murder shall be tried, shall, if they find such person guilty thereof, ascertain in their verdict whether it be murder in the first or second degree."

It is not the mere killing of a person in the perpetration or the attempted perpetration of a robbery or burglary that constitutes the offense of murder in the first degree. The killing while engaged in perpetrating or attempting to perpetrate a robbery or a burglary in order to constitute murder in the first degree, must be such as at common law would have been murder; that is, it must have been a killing with malice aforethought.

If, from all the facts in proof attending the killing, the jury can *fully, reasonably* and satisfactorily infer the existence of the *intention to kill and the* malice of heart with which it was done, *they will be warranted* in so doing. Judge Agnew, one of our

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ablest judges, held that: "He who uses upon the body of another, at some vital part, with a manifest intention to use it upon him, a deadly weapon, as an axe, gun, knife or pistol, must in the absence of qualifying facts, be presumed to know that his blow was likely to kill, and knowing this he must be presumed to intend the death which is probable and ordinary consequence of such an act. He who uses a deadly weapon without a sufficient cause of provocation must be presumed to do it wickedly and from a bad heart."

Therefore, gentlemen of the jury, he who takes the life of another with a deadly weapon, and with a manifest design to use it upon him, with sufficient time to deliberate, and while engaged in perpetrating, or attempting to perpetrate, a robbery or burglary, is guilty of murder in the first degree.

All murder not of the first degree is necessarily murder of the second degree. You alone are the tribunal that must determine whether the offense is murder of the first or second degree or manslaughter, in the light of the law, on the evidence heard.

Passing from the law, the question to be determined is, was Herman Umberger, on the 27th of February last, killed by the prisoners at the bar?

That he was killed, and the manner in which he was killed, was established by the testimony of Ella Stearn, Mrs. Umberger and Nannie Horner, Dr. Walker and Henry Rauch.

The inquiry you make does not take the form of who killed him, but did the defendants kill him?

Does the testimony point out the prisoners at the bar as the men?

The evidence is so voluminous I can only call your attention to the material substance of it as given by each witness, leaving you, who are the only judges of it, to find on all the evidence whether the prisoners committed the offense. Ella Stearn, Mrs. Umberger and Nannie Horner, the little girl, saw two persons enter the house at night, sit down at the stove for a while, and after some talk begin to search the house, alleging they were doing so by virtue of a search warrant. They detail at length and particularly the manner of search, the robbery and the homicide. Each one of these witnesses in turn stating all she saw and heard.

Some of them say the men wore, one of them, gum boots, the other, leather boots. All of them say one was taller than the other; that one was masked or had on a false beard and a hat; the other, two handkerchiefs tied over the face in the manner by them described, leaving part of the face above the mouth, exposed; the nose, eyes, forehead and part of the cheeks were exposed.

Ella Stearn and Nannie Horner describe the hat and say it had a piece out of the rim at the time it was worn in the house; all say one of the handkerchiefs was a red one with small white spots; all describe it as a brown hat.

The witnesses describe the overcoats then worn; one as a dark or brownish one, the other as a grayish one. The little girl say the gray coat worn by one had a little brown patch on the s

Could she have seen the coat at the hearing at Rauch's—was it there—had she never seen it but at the homicide ; each one details how she came to observe what she saw.

Neither of them knew the parties at the time. The girls say that at the hearing before Squire Rauch they saw the constable pull a red handkerchief with white spots from the hip pocket of David Nicely, and they identify it as one worn that fatal night, and the girls on the stand in court undertake to identify the handkerchief, and the hat, and the coats and including the widow, they say the prisoners at the bar are the men who did the robbing and killing.

You have heard all they said, and will consider it in connection with all other evidence in the case.

Each says the little man had the hat on, and the larger one his face tied up. Each of them undertake in court to identify the prisoners ; how they come to identify the men you have heard in the evidence, and you will consider it. The old lady is not certain about the handkerchief, and did not see the break in the rim of the hat.

[His Honor here reviewed the remainder of the important testimony at considerable length.]

Having instructed you as to the law relating to the offense and having called your attention to the evidence, we now instruct you on the law of the evidence.

The prisoners set up the defense of an alibi. They allege that they were at a different and distant place at the very time of the homicide and for some time immediately preceding and after, and that therefore they not only did not commit the offense, but by no possibility could have committed it at the time and place where the homicide was committed. They agree that as one body can not occupy two inconsistent positions at the same time, they could not have been at the Umberger house in Somerset county, at from 7 to 8 o'clock on the evening of the night of the 27th of February, and at the same time in Westmoreland county, at as much as 13 to 15 miles remote from the Umberger house. And that therefore, notwithstanding the testimony of the Commonwealth, in which it endeavors to identify them as the persons who committed the offense, that the Commonwealth's witnesses must be mistaken as to the identity of the parties who committed the homicide and therefore they should be acquitted.

It won't be denied that if the accused have successfully shown that at the time of the homicide they were really in another place sufficiently remote from the scene of the offense, so that they could not possibly have been present, then the conclusion would be irresistible that they could not have committed the offense.

It is undoubted law that an alibi is as much of a traverse of the crime charged, as any other defense, much, however, depends on *the strength of the alibi.* The stronger the evidence of the truth *of the alibi, the more irresistible* will be the conclusion of innocence, *but, the time relied on* to establish the alibi should correspond *closely with the time of* the commission of the crime, so as

to show that the accused party could not have been at the place where the offense was committed. Or the evidence of the alibi should be so strong, taken in connection with all the evidence, as to raise a reasonable doubt of the presence of the accused parties at the homicide. That is, though the proof of the alibi should not be clear, yet if the proof *tends* to establish an alibi, this, with all the other facts in the case, if it raise a reasonable doubt, would acquit.

In cases where the Commonwealth rests upon positive and undoubted proof, tending to prove guilt, it should not be overcome by less than full, clear and satisfactory evidence tending to prove the alleged alibi.

The burden of proving guilt lies on the Commonwealth and is at no time shifted; hence the Commonwealth must satisfy the jury of guilt beyond a reasonable doubt. All the evidence which tends to establish an alibi and that which tends to disprove it is for the jury and the jury alone.

The inquiry into an alleged alibi involves time, place and person, as well as the credibility of the witnesses and the reasonableness of the alibi set up. The jury are to consider whether the alibi as to time is made out, for, it might happen, that the fact of the parties presence at a certain place on a certain occasion may be true, yet there may be a mistake as to time. The jury must consider the alleged time of the homicide, and the alleged presence of the prisoners at the same time, and ascertain whether any one is mistaken; this they must do, however, on the evidence.

An alibi when duly established is one of the most decisive defenses; but the evidence adduced to support the alibi requires to be minutely considered. The difference in time pieces, and the transit from one place to the other, and distance apart, and whether the alleged transit was on foot must be considered.

You should consider:

1. The time when the homicide was committed.

2. The time of the alleged alibi. Was the alibi proven by credible witnesses, speaking the truth? Are witnesses who testify as to seeing the defendants at the places named thoroughly truthful and certain as to the time, or may they be mistaken as to the time; and are the witnesses to the homicide certain as to the identity of the parties? An alibi is a defense like any other defense, but it is often abused. It may be founded in falsehood, and when it is it should fail. It may be founded in truth, when it is, it becomes as strong negative evidence as can be offered, and when well established should prevail and acquit.

The weight to be given an alibi, I repeat, is solely a question for the jury, who should examine all the evidence bearing upon it with caution, and then on the evidence of the alibi and the evidence of the whole case, giving the prisoners the benefit of the doubt, if any exists, determine the guilt or innocence of the accused.

An eminent physician and surgeon testified as to the health an *physical condition* of David Nicely from the time he was imp

oned until now, and says that as a physician he is able to say that the affliction is one that must have existed before the time of the offense. He tells you the effect it has upon him and upon his powers of work and endurance and the effect fast walking or running might have. The jury are to look at the evidence of the doctor as that of an expert in his calling in connection with all the evidence in the case and give it such weight as, in their opinion, it should have. You are not bound to act upon it to the exclusion of other evidence, but give it just weight, and determine from all the evidence in the case whether David Nicely could or could not have been at the place at the time, as one of the perpetrators of the homicide. The persons who testified were all competent witnesses under our laws. The defendants are made competent by statute. The credibility of the witness is for you alone. You take into consideration the interest of the witnesses in the result, the relationship to parties, the reasonableness of their statements, and the coincidence of their testimony with collateral circumstances; the contradictions, if any, in material matters; and looking at all the facts and circumstances give the testimony its just weight.

Outside of the testimony of the women who were present and undertake to identify the defendants the Commonwealth has sought to connect the prisoners by circumstantial evidence. When a criminal charge is to be proved by circumstantial evidence, the proof should be not only consistent with the prisoners guilt, but it should be inconsistent with any other rational conclusion. The facts which inculpate the prisoners must be absolutely incompatable with the innocence of the accused party, and incapable of explanation upon any other hypothesis than that of guilt; they should produce in effect a reasonable and moral certainty that the accused and no one else committed the offense charged.

The counsel have invoked the presumption of innocence as a shield. The law presumes every men charged with the commission of an offense as innocent, and this legal presumption shields and protects him until the proof in the case establishes guilt of the offense charged in the indictment, and satisfies a jury of the guilt beyond a reasonable doubt. The burden of proof is on the Commonwealth, who must prove all the material allegations in the indictment, so as to satisfy the jury on the whole case beyond a reasonable doubt. If this is not done the jury should acquit. If the guilt has been so established beyond a reasonable doubt, the jury should convict.

It is not the rule that there must be an acquittal in all cases of doubt. It requires a *reasonable* doubt to acquit. The doubt, to acquit, should be a doubt so grave and substantial as to produce in the mind of the juror entertaining it, long and anxious uncertainty as to the verdict he should give. Proof beyond a reasonable doubt, not proof beyond all possible or imaginary doubt, but such proof as excludes every reasonable hypothesis, except that which it tends to support. It is that state of the case which, after the entire comparison and consideration of the evidence, leaves the minds of the jurors in that condition that they cannot say they

feel an abiding conviction, to a moral certainty, of the charge, but absolute certainty is not required.

Chief Justice Agnew says: "A reasonable doubt must be an honest and conscientious difficulty in believing; not one merely subtle and ingenious; it must arise out of the evidence and not be fanciful nor be conjured up to escape consequences; it must strike the mind with such force as to compel it to pause in yielding belief."

In conclusion, gentlemen of the jury, on the indictment, the verdict to be rendered by you should be based on the evidence, and it must specially state the degree of the homicide. Nobody has for a moment thought the offense could be manslaughter, as you will probably conclude under the definition I gave you. Was it murder? If so, you must say whether it was murder of the first degree or murder of the second degree. If you find the prisoners have not been proven guilty beyond a reasonable doubt, your verdict would be generally, "not guilty." If you find them guilty, your verdict would be either "guilty of murder in the first degree" or "guilty of murder in the second degree." The case is left with you on the evidence, which you must consider for yourselves, and infer nothing as to any opinion of the court on the evidence, for it expresses none and insinuates none: you are left free and must decide for yourselves.

CHAPTER V.

Judge Baer finished his charge to the jury a little before 7 o'clock on Friday evening, June 7th. The jury was given into the hands of Constables W. P. Huston and Lee Roy Scott. The jury retired to the jury room, and court adjourned till 8 o'clock next morning.

In a short time after the jurymen reached their room a ballot was taken, which stood nine in favor of a verdict of murder in the first degree and three for acquittal. At a later hour another ballot was taken, which stood eleven for conviction and one for acquittal. Next morning, just before the jury entered the court room, another and final ballot was taken, resulting in a unanimous verdict for conviction.

It was not expected that the jury would agree upon a verdict during the first night, and the audience in the court room was rather small. The defendants, Joseph and David Nicely, were brought into court.

TAKING THE VERDICT.

The following account of the manner of taking the verdict

taken from the notes of the official court stenographer, Rev. Peter Vogel:

Saturday morning, June 8, 1889, at 8:45 o'clock the jury came into the court-room, * * and the jury answered the roll-call of the clerk.

The Clerk—(standing outside of the bar and before the jury, says:) Gentlemen of the jury, hearken to your verdict as the Court records it. In the case of the Commonwealth vs. Joseph and David Nicely you say you find the defendants, Joseph Nicely and David Nicely, guilty in manner and form as they stand indicted.

The Jury—Yes, sir.

The Court—You do not say what you have found the defendants guilty of. Go back to your room and say specifically what you have found them guilty of.

Mr. Koontz—We object; the verdict has been taken.

The Court—It has not yet been recorded. The jury say they did not fully understand the charge as to the form of the verdict.

Mr. Koontz—We ask to have the paper of the jury filed.

The Court—Yes, sir; that will be filed.

The Court again—The jury having said they did not fully understand the charge as to the form of the verdict, they are now recharged as to the request, in the presence of the prisoners and before the recording of the verdict which they returned and which was in this form: "We find the defendants, Joseph Nicely and David Nicely, guilty in manner and form as they stand indicted." We charged you, that if the jury find that the crime of murder was committed, the jury must by their verdict say whether it be guilty of murder in the first degree or murder in the second degree. They must, if they find it murder, state the degree in their finding. Take this paper back and put your specific verdict on it.

Mr. Koontz—We request that that paper be filed now.

The Court—Call that jury back. (Which having been done, the Court says:) The jury will hand me that paper again. You can return to your room, gentlemen of the jury, and just take another paper, when you return, and put your specific verdict on it.

Mr. Koontz—Now, Your Honor will file this paper and seal us a bill.

The Court—Yes, sir; but we have not quite got the paper ready. *(The Court reads):* "The finding having been returned, and before recording the Court sent the jury back with additional instructions.

because instructions were requested, which instructions have been filed, it is now permitted to be filed but not permitted to be recorded as their verdict.

Mr. Koontz—But it is their verdict and on record, for the Clerk said: "Hearken to your verdict as the Court records it."

The Court—It could not be recorded until taken—till it was found out what their verdict was.

Mr. Koontz—We ask that a note be made on the record that the verdict had been taken by the clerk.

The Court—You have all that was done.

Mr. Koontz—We want a bill to the second charge.

The Court—Seal a bill on the second charge.

9:30 A. M., the jury return and the clerk calls the roll and the jury answer to their names. The clerk also calls the names of the defendants and they answer.

The Court—The clerk will take that paper and take the verdict from the jury.

The Clerk—Prisoners, look upon the jury; jury, look upon the prisoners. How say you—are the prisoners guilty of the felony whereof they stand indicted?

The Jury—Yes, sir; we find the defendants, Joseph Nicely and David Nicely, guilty of murder in the first degree.

The Clerk—Gentlemen of the jury, hearken to your verdict as the Court records it. You say that the defendants, Joseph Nicely and David Nicely, are guilty of the felony whereof they stand indicted.

The Court—No, you must state it specifically.

The Clerk—Gentlemen of the jury, hearken to your verdict as the Court records it. In the case of the Commonwealth vs. Joseph Nicely and David Nicely you say you find the defendants guilty of murder of the first degree, and so say you all.

The Jury—Yes, sir.

Mr. Koontz—Now we ask the jury to be polled.

The Court—Let the jury be polled.

The Clerk—Ephraim D. Miller, the jury find the verdict of guilty of murder in the first degree, and this is your verdict.

Mr. Miller—Yes, sir.

In a similar manner are polled, Josiah Newman, Jacob L. Manges, Fred F. Walker, John W. Beck, John H. Hite, W. W. Davis D. J. Wolfersberger, Jeremiah Henry, T. W. Black, C. W. Weigl

and A. J. Sembower, who, in the order named, respectively, answered the interrogatory of the clerk in the affirmative.

Mr. Koontz—Your Honor will seal us a bill for the form of the interrogatory in polling the jury?

The Court—Yes, sir; seal a bill.

The Clerk—Gentlemen of the jury, hearken to your verdict as the Court has recorded it. In the case of the Commonwealth vs. Joseph Nicely and David Nicely you say you find the defendants, Joseph Nicely and David Nicely, guilty, as they stand indicted, of murder in the first degree, and so say you all.

The Jury—Yes, sir.

The Court—The jury is now discharged.

[The irregularities indicated in the foregoing account of the manner of rendering and receiving the verdict of the jury were embodied in a specification of error, subsequently, by the defendants' counsel in arguing the case before the Supreme Court,—Defendants Paper Book, page 68.]

The counsel for the defendants immediately, June 8th, 1889, made a motion for a new trial for the defendants.

CHAPTER VI.

The motion for a new trial was argued on August 13 and 14. On August 19th, Judge Baer over-ruled the motion for a new trial and refused a new trial for the defendants.

On the same day District Attorney Biesecker made a motion for the immediate sentencing of the prisoners.

The Court—Let the motion be filed.

THE SENTENCE OF THE LAW.

The Court said: "Have you, Joseph Nicely, anything to say why the sentence of the law should not now be pronounced upon you?"

The prisoner arose, and, in a strong, clear tone of voice, said, "I would just simply say I am not guilty."

The Court—"Have you, David Nicely, anything to say why th sentence of the law should not now be pronounced upon you?"

David Nicely, without moving in his seat, replied, "I ha *nothing to say.*"

"*Joseph Nicely,* stand up," said Judge Baer. Continuing,

HON. JOHN CESSNA.

said: "The sentence of the law is that you, Joseph Nicely, be taken to the jail of Somerset county, whence you came; and there within the walls of the said jail, on such day and time as may be appointed by the Governor of the Commonwealth, you be hanged by the neck until you be dead; and may God have mercy on your soul."

"David Nicely, stand up," said the Court. "The sentence of the law is that you, David Nicely, be taken to the jail of Somerset county, whence you came, and there, within the walls of the said jail, on such day and time as may be appointed by the Governor of the Commonwealth, you be hanged by the neck until you be dead; and may God have mercy on your soul."

The condemned men bore up under the trying ordeal with remarkable coolness.

On the next day, August 20, 1886, counsel for the defendants took an appeal to the Supreme Court of Pennsylvania. On the 24th day of August the writ of Certiorari from the Supreme Court was received and filed, returnable on the third Monday of October, 1889.

CHAPTER VII.

On August 28, just nine days after the sentence of death had been pronounced on Joseph and David Nicely, Deputy Sheriff Milton R. McMillen discovered what was a well-nigh successful attempt on the part of the prisoners to escape from the old Somerset jail.

It was the custom of Sheriff McMillen to make almost daily examinations of the interior of the old jail, a notoriously unsafe institution for the keeping of prisoners. On the day previous to the discovery by the deputy sheriff, Sheriff McMillen entered the jail with the purpose of the usual examination. He had examined the cells on the first floor and had ascended the stairs to the second floor when his attention was attracted to a noise on the first floor. John O'Brien, one of the prisoners in the corridor below, had fallen to the floor in a "fit." The other prisoners gathered around and the Sheriff descended the stairs to see what was the matter, and he found O'Brien apparently struggling in the most violent convulsions. There was no water in sight and the Sheriff brought i

some water and bathed the classic features of the red-headed Irishman, after which the convulsions seemed to gradually subside and the Sheriff bandaged O'Brien's head with a wet towel. The Sheriff proposed sending for the jail physician, but O'Brien objected, saying he often got "fits." No doubt he did; because no one could so perfectly simulate that dreaded affection without previous practice.

O'Brien's "fit" had the desired effect of keeping the sheriff away from the upper cells. He called next morning for the purpose of inspecting the interior of the jail; but he had scarcely entered the door when he was met by young Patterson, a prisoner awaiting trial for the murder of his stepfather, who handed the Sheriff two letters and asked him if he wouldn't post them for him so they would go off on the morning mail. The Sheriff took the letters and was about to proceed with his inspection of the cells when James Lehr, committed for the murder of Charles Scott at Confluence, stepped up and gave him a message, saying it was to his brother in Indiana, and asked if he wouldn't take it to the telegraph office at once. The obliging Sheriff started for the telegraph office, little thinking of the mischief on hand.

A few hours later Mr. Rufus E. Meyers, acting as escort to three young ladies, called at the sheriff's office and asked the deputy sheriff for admittance into the jail. Deputy Sheriff McMillen accompanied the party into the jail corridor, and while Mr. Meyers chaperoned the ladies from one cell to another the deputy sheriff leisurely made the rounds of the upper tier of cells.

The upper cell on the East side of the jail was known as the "condemned cell," for the reason that it was not lined with sheet iron, as all the other cells were, and because prisoners had occasionally escaped through the brick wall, thirteen inches thick. When reaching the "condemned cell," instead of only peering through the hole in the upper part of the outside door of the cell, as he always did before, he opened that door and looked through the iron grating of the inside door of the cell, when, to his surprise, he discovered a pile of broken brick, mortar and pieces of wood. As he shook the door the hasp fell from the iron bolt. The lock had been "picked," the door opened and the lock carefully replaced, giving it the appearance of not having been tampered with. A hole had been worked in the wall, and all but the outer wall of bricks removed, and the bricks in the outer wall carefully loosene

so that it would require only a slight pressure to push them out. Three bed sheets, knotted together to afford a means by which the prisoners could lower themselves to the ground, were also found. Everything was in readiness for the escape that evening at seven o'clock, just before night-watchman Richardson would go on duty; and but for the visit of Mr. Meyers and the young ladies in all probability there would have been a general jail delivery that evening.

It was afterward learned from some of the prisoners that the escape could have been made on the evening before, but Joseph Nicely, the captain of the inmates in the jail, refused to go, and, it is said, expressed his contempt for that kind of an escape. He said he preferred going out the jail door.

CHAPTER VIII.

At 12 o'clock, on September 16, 1889, Joseph and David Nicely made a bold dash for liberty. Milton R. McMillen, the Deputy Sheriff, was shot twice by Joseph Nicely during the scuffle that took place in the hall of the jail leading to the front door. The shots from Joseph's revolver attracted the attention of District Attorney Biesecker who was passing along on the opposite side of the street, and who a moment later saw the two Nicelys emerge from the front door of the jail and run in the direction of North street, both clearing the iron fence at a single bound.

The alarm spread over town in an incredibly short time. Nearly every person in town was at dinner; but it is extremely doubtful whether any man, woman or child living withing the borough limits ate a whole dinner on that day. Everybody flocked toward the court house. Then came the cry, "The Nicelys have killed the deputy sheriff." The wildest excitement prevailed. All the firearms in Somerset were brought in sight at about the same moment.

A MEMORABLE CHASE.

The fleeing prisoners had crossed the Somerset & Cambria railroad at the North street crossing and had entered what is known as Oak Ridge, a tract of densely timbered land lying East of Somerset, containing about thirty acres. The pursuit began. When the mass of excited citizens reached the hill at the Academy school building, commanding a view of Oak Ridge, several skirmishes

had already reached the vicinity of the wood. Among these were Rev. A. J. Beal, of the Evangelical Association of Somerset, who, seeing Joseph Nicely in an open spot in the woods, fired at him, the ball from the minister's revolver grazing Joseph's hair. Associate Judge George W. Pile and Irvin H. Pile, who had seen the brothers pass their houses going down North street, immediately mounted their horses and rode out the Stoystown road to prevent the fugitives crossing into the long thick strip of woodland on the West side of the road.

It was not long before a guard surrounded Oak Ridge, and a search of the woods commenced. Soon a rifle shot rang through the woods; Snyder Louther and Ross F. Davis had espied David Nicely in the top of a young tree. Two rifles were leveled at David and it was suggested that he come down. He came. "For God's sake, don't shoot," pleaded the prisoner, holding up his hands. "Don't let them lynch me, for God's sake; it wasn't me that did the shooting," said the prisoner as he was hurried along toward the jail, surrounded by an angry crowd of citizens composed of elders and deacons of churches, business men, professional men, mechanics, etc., yelling frantically, "Lynch him! Shoot him! Hang him!" Deputy Richardson and Mr. Ross F. Davis, who were escorting David back to the county jail, protected their prisoner by continually flourishing their revolvers in the faces of the men who composed the frenzied mob. David was soon lodged behind the bars, and then the great crowd of men, women and children started back in the direction of Oak Ridge, most of them stopping on the Academy hill to watch the animated scene in the woods as the search for Joseph proceeded.

Oak Ridge had been scoured in search of Joseph Nicely, and it seemed he would not be found, because it was believed he had crossed over into one of the neighboring woodlands and successfully eluded the searchers. As a last effort a line of searchers was formed, with men six feet apart, and the long line started through the woods. It was only about an hour after David had been safely lodged in the old jail when Joseph was found underneath a pile of brush near the northern border of the woods. To Charles F. Uhl, Jr., belongs the credit of first discovering Joseph Nicely. Mr. Uhl was armed with a huge old horse pistol, but he did not trust his ancient weapon to the extent of commanding so dangerous a character as Joseph Nicely to surrender. He beckoned to Mr. Al-

exander H. Huston, who was armed with a Spencer rifle. Mr. Huston soon brought Joseph to his feet with the exclamation, "Don't shoot, for the love of God; I am unarmed!"

The scene surrounding the spot where Joseph Nicely was recaptured was indescribable. The men who were the bravest and foremost in hunting the fugitive were the men who gathered around the prisoner and protected him from mob violence. Guns, revolvers, clubs and fists were brandished in the most reckless and indiscriminate fashion; but mob violence was thereby prevented, be it said to the credit of Somerset citizens. One of the men—Mr. Elias Cunningham—told the terrorized Joseph that he was in the hands of the "Somerset County Dutch," and that the law must have its course. This information was very comforting to Joseph Nicely and wonderfully placated those of the would-be "lynchers" who heard that popular expression.

Joseph Nicely was taken back to jail, followed by a mob similar to that which made his brother David's trip from Oak Ridge to the county jail a succession of terrors.

Following is Deputy Sheriff McMillen's account of the escape of the Nicelys from the jail on that day:

"The day watchman, William Kifer, had gone out for some water for the prisoners. When he came in I unlocked the door from the outside and let him pass into the jail corridor. I was pushing the door after Keifer, but before I got it closed Joe Nicely sprang between Keifer and the door and pointed a revolver in my face. I tried hard to push the door shut, but Joe had the advantage of me and all I could do was fight or throw up my hands. I grabbed Joe's wrists and did what I could to hold him. During the scuffle that followed I got a chance to lock the door, which I did, but the key was sticking in the door and Dave Nicely reached out of the hole in the door and unlocked the door. Dave ran past Joe and me just as Joe shot me the second time. I thought I was fatally wounded and let go of Joe. All this time "Shorty" Garno, the Rockwood burglar, was holding up Keifer inside the jail with two revolvers. I went into the side room, got a rifle and followed after the Nicelys to the wash-house, where I found I was too weak. I went back, locked the jail door and went into the adjoining room and lay down on a bed. The game they had planned did not work as they had expected it would. They had calculated that I would throw up my hands when confronted by Joe Nicely with a revolver pointed at me, and that when I would give up they would quietly bind and gag Keifer and me, then throw us into one of the jail cells while all the prisoners would make their escape before an alarm could be given."

The first shot from Joseph Nicely's revolver struck Dep

Sheriff McMillen's left side, and, passing around his body came out of his back. The second shot was aimed directly for the deputy's heart, and but for the fact that he carried a small pass-book in his upper vest pocket on the left side, which fortunately deflected the course of the ball somewhat, although he still carries that particular ball in his body. For more than two weeks the brave little man lay between life and death; and he has not yet fully recovered from the effects of the shooting, nor is it likely that he ever will fully recover therefrom.

Public sentiment, which seemed for a time to change somewhat toward the prisoners, now turned more than ever against them. Indeed, the attempted escape from jail was a most unfortunate incident considered in connection with their case before the Supreme Court in October.

CHAPTER IX.

The case of Joseph and David Nicely was argued before the Supreme Court at Pittsburg on the second Monday of October, 1889.

The defendants' paper-book contained nearly four hundred pages, and showed with what great care and diligence the counsel for the prisoners had worked up their case. This paper-book has been much sought after by members of the legal profession not only in Pennsylvania, but by those in other States. Unfortunately the printer did not publish any extra copies of the book.

The Supreme Court handed down its decision on November 10, 1889. Following is

CHIEF JUSTICE PAXSON'S OPINION.

But few of the numerous specifications of error in this case require notice; none of them needs extended discussion. The defendants below were indicted for homicide and were convicted of murder in the first degree. At the trial of the cause the District Attorney appears to have been aided by private counsel and the defendants complain that in many instances things were said by counsel for the Commonwealth either directly to the jury, or in their presence or hearing, which were not warranted by the evidence or which were unfair comments upon it. While the matter has been brought up on the record by exceptions, we have only isolated passages extracted from the remarks of counsel—generally three or four lines—and we cannot but imperfectly judge

of their character and propriety, nor can we tell how they may have been qualified by what preceded or followed them. I am not aware of any way by which the speeches of counsel can legally be placed on the record, nor do I well see how the judgment of the court could be reversed by reason of their remarks. I would regard any system of practice by which error could be assigned to the summing up of counsel as a very great calamity. In the instances complained of the record shows that whenever the attention of the court was called to them, the learned judge treated them as harmless and directed the jury to pay no regard to them. As an illustration I refer to the eighth specification. It is as follows: "The court erred in its answer to the second exception of defendants to the remarks of the counsel for the Commonwealth to the jury, which said exceptions and answer are as follows:

"This trial will go very far to show whether every merchant or mechanic is to be safe from masked villians.

"The Court—This flight of oratory must not have any effect upon the jury."

I also refer to the thirteenth specification.

"The court erred in its answer to the thirty-fifth exception of defendants to the remarks of the counsel for the Commonwealth to the jury, which said exception and answer are as follows:

"There has been false swearing on one side or the other of this case. When you have found out on which side the false swearing has been done, you will have banished the last shade of the last glimmer of the last shadow of a doubt.

"The Court—Mr. Cessna always makes that remark in criminal cases. In view of remarks made by adverse counsel this needs no correction. We doubt if it could have affected the jury one way or another."

These are fair examples of this class of specifications. While they do not furnish any legal grounds for the reversal of this judgment they are suggestive of a heated zeal on the part of counsel engaged on either side in the trial of the cause. It is difficult to measure the amount of zeal which is allowable, or at least excusable, on the part of counsel engaged in the defense of a man who is upon trial for his life. Writers upon professional ethics differ upon this subject and I will not discuss it. We have no difficulty, however, in measuring the extent of zeal which counsel for the Commonwealth may properly display upon such occasions. The District Attorney is a quasi judicial officer; he represents the Commonwealth, and the Commonwealth demands no victims. It seeks justice only, equal and impartial justice, and it is as much the duty of the District Attorney to see that no innocent man suffers as it is to see that no guilty man escapes. Hence he should act impartially: he should present the Commonwealth's case fairly, and should not press upon the jury any deductions from the evidence that are not strictly legitimate. When he exceeds this limit, and in hot zeal seeks to influence them by appealing to their prejudices, he is no longer an impartial officer, but becomes

Humbertson, a boy named Keyser and old man Queer had left through a hole in the brick wall under the parapets at the northeast corner of the jail building. Queer had both his legs broken in his fall of probably twenty-five feet.

Young McCarty told the following story of the escape:

"Humbertson, the Rockwood burglar, sawed the lock off the trap door ten days ago and went up into the loft every day thereafter, where he could be heard working on the brick wall. The boy Keyser always stood guard and had plenty of time in which to notify Humbertson of the approach of any of the jail officials. At dark this evening the combination box was opened and the Nicely boys were soon released from their cells and had hid the saws beneath the dry closets. When the door of Humbertson's cell was opened it required very little effort to crawl from it through the trap door above. Humbertson was the first to go up. The blankets and hammock in his cell were handed to him, and in a second Joe Nicely joined him. It was almost seven o'clock by this time. and the prisoners were greatly excited. Joe and Humbertson were engaged in making a rope by the light of a small hand lamp that had been handed up to them, and removing the outer layer of bricks from the hole that had been dug alongside the water spout in the northeast corner of the wall. "Everything is ready; come on, Dave," whispered Joe from the hole in the ceiling, and the next minute Dave had joined his brother and Humbertson in the garret. Joe was the first to attempt to crawl down the hurriedly constructed rope, and it broke under his weight, letting him drop about ten feet to the ground. Humbertson followed next, and, catching hold of the water spout, succeeded in reaching the ground in safety. Dave's turn came next, but he missed his hold on the spout and fell more than one half of the entire distance from the rope to the ground. Keyser scaled the water pipe in safety. By this time Queer had crawled into the loft, notwithstanding the warnings given him by the darkey and McCarty, who told him that he could never crawl down a rope. Both of these prisoners say that Queer was greatly excited and was blowing like a bellows, and that Joe Nicely had ordered him from the trap door above to keep still and stay where he was or he would kill him. But Queer said, "I am going to leave," and two or three minutes afterward the prisoners left behind heard his body falling to the ground, quickly followed by his cries of pain."

The wildest excitement prevailed in town, and in a short time almost the entire male population of the borough had gathered around the county jail. The court house bell was rung and a small body of citizens gathered into the court room at the call of Sheriff McMillen, who publicly announced that he would give a reward of two hundred dollars for the recapture of the Nicelys. He was followed by Valentine Hay, Esq., John H. Uhl, Esq., and John R. Scott, Esq., each of whom offered to contribute one hun

dred dollars to a reward for the return of Joseph and David Nicely to the county jail. After the meeting, as soon as horses could be obtained, a number of men started by different routes in the direction of Westmoreland county.

The feeling of disgust and exasperation on the part of most of the citizens of Somerset can be better imagined than described. A large majority of them expressed the hope that Joseph and David Nicely would never be recaptured. And this feeling was not by any means confined to the residents of Somerset town, but the county at large was even more thoroughly disgusted.

On Sunday morning Sheriff McMillen and a large posse of assistants started for the mountains on horse-back. All day the people of Somerset were on the tiptoe of expectancy for news that would lead to some conjecture as to the whereabouts of the escaped prisoners, or of a possible recapture; but no news of any kind came to hand.

DAVID NICELY BROUGHT IN.

On the following (Monday) morning, much to the surprise of everybody, William Ferner, a young farmer residing about a mile north of Somerset, drove up to the county jail with David Nicely beside him in his buggy. David was assisted into the jail and securely locked in his cell before more than half a dozen persons had learned of his arrival. Following is Mr. Ferner's account of his capture of David Nicely:

"I took a lantern and went to the barn to feed my stock before daylight this morning," said Mr. Ferner, "and after I had climbed into the mow and put one or two forks full of hay in the racks, I was startled on hearing a voice plead, "For God's sake, don't kill me; I am hurt and want to give myself up." Ferner was unable to see from whence the voice proceeded, and asked, "who are you?" "Dave Nicely," was the prompt reply. "Well, get out of there and down onto the threshing floor," Ferner commanded, holding his hay fork in a threatening position. The command was obeyed as promptly as the poor wretch's crippled condition would permit of his climbing to the floor below. Seeing his helplessness, Ferner assisted him to his house, and in compliance to a request for something to eat from the almost famished man, set about preparing a meal for him. By the time the meal was prepared Dave became sick and was able to eat but little. He complained constantly of his foot, and Ferner bathed it for him in cold water. Notwithstanding his helpless condition, he offered Ferner $1,000 to carry him to the other side of the mountain, and assured him that the money would be forthcoming when they arrived there. "That is double the reward offered for us," added Dave. Ferner

spurned the offered bribe, and about half-past eight o'clock he hitched up his horse and brought the poor devil to the jail.

On examination, Dr. Kimmel found that Dave Nicely's left ankle was badly broken, both of his feet frozen, and that his left wrist was terribly sprained. The Doctor did everything in his power to relieve the sufferings of the miserable man, but feared he would be unable to save him from being a helpless cripple.

JOSEPH NICELY RETURNED TO JAIL.

The country between Somerset and the Ligonier Valley had been thoroughly scoured for Joseph Nicely, and almost every barn had been searched along the several roads leading to the Laurel Hill mountains. David Nicely had told the visitors to the jail, "I have no idea where Joe is, but if he is where I think he is a thousand men will never find him." It began to look as if Joseph Nicely had made good his escape as each searching party came in and reported that they had heard or seen nothing that would lead them on his trail. On Tuesday afternoon, however, Mr. Jonathan Barclay, a well-to-do farmer residing just at the northern edge of the borough line, within a quarter of a mile of the county jail, drove quietly up behind the jail building in a two-horse spring wagon. There were three passengers in the wagon; Mr. Barclay, the driver, Mr. William Miller, a neighbor of Mr. Barclay, and the third distinguished occupant, clad in a heavy over-coat and a heavy broad-brimmed felt hat pulled down over his brows, was Joseph Nicely. There was no time lost in getting Joseph back into his quarters in the jail, and Mr. Barclay, not in the least excited or perturbed over the incident of finding Joseph Nicely in his barn, remained to tell the story of his discovery.

In response to the request to tell the story of Joe's arrest, Mr. Barclay good-naturedly replied, "Well, there is not much to tell. All my neighbors' barns were being searched, so I concluded to searoh mine.

"I searched the barn this morning. I would jam my fork down into the straw and would holler, "Nicely, come out here and get a good dinner." I had no idea that he was in my barn. Just after dinner my little hired boy, Robert Hochstetler, 16 or 17 years old, and I went to the barn to feed the cattle. I was giving the stock their fodder, when the boy came running down from the threshing floor and said there was some one up there, and he believed it was Nicely. I then went up and found Joe Nicely sitting on a log on the mow. He said he was Joe Nicely and that he had sprained his leg and couldn't go any further; said the rope tore when he was trying to get out of jail. I helped him to the house; he was trembling and could scarcely walk. When we got him to the house my neighbor, Wm. Miller, came; he and I bathed his

Hon. W. H. Koontz.

sprained foot in cold water. We then gave him dinner, hitched the horses to the spring wagon and brought him to jail. He asked us not to tell any one who he was till after he was back in jail. He had thin clothes on and was almost perished ; I put my overcoat and hat on him when we started to town ; his left hand was badly skinned and torn and was very much swollen. Coming up the road he said, 'I despise going into that jail again ; I have been there for 21 months, almost two years.' Coming up the alley he pointed to the hole in the wall of the jail and said, 'there is the hole I came out of.'"

CONVERSATION BETWEEN JOE AND DAVE.

About five o'clock, when all of the persons whom the Sheriff had admitted had left the corridors, David Nicely, who was lying prone on his back in a cell adjoining that in which Joe is confined, called out to Joe :

"Say, Joe, why did you not get farther away ?"

"Dave, I was too badly hurt to go any farther."

"O, pshaw. I was twice as badly hurt as you were and I got a great deal farther away than you did." After a moment's silence, Dave continued : "We might as well give up now."

"I can't see why," replied Joe. "We haven't hurt any one but ourselves, and how an effort to escape, situated as we are, can affect the measures going on for our relief, is something I can't understand."

"Why didn't you take a horse and get away ?" demanded Dave, in a peevish tone.

"I did think of that, but on Saturday night I was afraid to do anything for fear I would be retaken. The same fear restrained me Sunday night, and last night the snow came and I was afraid they could track me if I tried to get away on horseback."

"I was hoping all the time that you would get away," said Dave, petulantly ; "because if you had, nothing would have been done with me as long as you were at large. They have published mine and mother's letter to the Pardon Board."

This piece of information appeared to astonish Joe and he muttered a few words of surprise.

Joe then began to reproach Dave for not taking his advice relating to the means of escape adopted. "You always know so much," said he viciously. "If you had taken the hammocks and tied them together there would have been no break and every one of us would have got off safe and escaped. That little piece of rope you know I complained of, but you would use it and now we are both here in jail with broken bones and Queer likely to die."

"Yes, but I did not think the rope would break," said Dave, meekly. "It appeared to be strong enough, but tore where it was partly cut off, if the rope had been strong enough we all would have got away."

Both of the Nicely boys were badly crippled by the fall. Dave sustained a broken foot and sprained arm. Joe's feet were

verely frozen from exposure. Neither of the brothers had entirely recovered from their injuries at the time of the execution.

Queer died in jail from the effects of the injuries he sustained. Humbertson was never recaptured and Keyser was discharged.

CHAPTER XI.

BEFORE THE BOARD OF PARDONS.

The case of Joseph and David Nicely was brought before the Board of Pardons four times by their counsel. The first hearing was on the 18th of April, 1890; the second, on the 11th of November, 1890; the third was a hearing before the Governor on the 9th of Jannary 1891, and the fourth time on a motion for re-argument before the new Board of Pardons on the 24th day of January, 1891.

Among the papers laid before the Board of Pardons was one purporting to be the confession of one John Beach, who appeared at the house of Justice Elijah P. King, in Middlecreek township, on Sunday evening, June 8, 1890. Numerous depositions were also offered, notably one from J. W. Beck, a juror who sat in the trial, stating that he had been forced by his fellow-jurors to agree to a verdict of guilty of murder in the first degree. A letter was also submitted, mailed at Chicago, signed F. R. S., proclaiming the innocence of the Nicelys and admitting the writer's guilt.

After it was decided to take the case before the Board of Pardons, Messrs. Weiss & Gilbert and S. J. McCarrell, three eminent attorneys at Harrisburg, were employed for the defendants to aid the local counsel in presenting the case to the board at Harrisburg.

When the case came up for argument the counsel for defendants upon consultation agreed that the opening speech be made by Mr. Koontz. He began his argument by undertaking to define the power and authority of the Board of Pardons, and as his brief in this branch of the case was published in the Harrisburg *Patriot*, the full text of it is here given:

General Koontz confined a part of his remarks to the question of jurisdiction of the pardon board. He said:

The word pardon, in its legal sense, has been variously defined. *One definition is,* "Where the government releases a person from *the punishment* which he has incurred for some offense."—Rapalje's *L. D., Vol. 2, page* 922; Cope vs. Commonwealth, 28 P. S. R. 97. *Another, that it* is, "in its narrower sense a declaration of

record by the sovereign, that a particular individual is to be relieved from the legal incidents of a particular crime."—Wharton C. K., 521. Another, that it is "the remission of guilt," and it is said upon good authority that perhaps this is as good a definition as can well be given, without giving a general description of the effect of a pardon.—Criminal Law Mag. and Rep., Vol. 6, page 457.

In another case it is said to be "an act of grace by which an offender is released from the consequences of his offense, so far as such release is practicable and within the control of the pardoning power, or of officers under its direction."—Knote vs. United States, 95 U. S., 149.

Another definition much quoted is, that "A pardon is an act of grace proceeding from the power entrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for the crime he has committed. It is the private, though the official, act of the executive magistrate, delivered to the individual for whose benefit it is intended and not communicated officially to the court."—Ch. J. Marshall in U. S. vs. Wilson, 7 Peters, 158.

In all of these definitions it will be be seen that in granting a pardon it is implied that the person pardoned has been guilty of a crime, and that the act of pardoning is an act of grace on the part of the executive entrusted with the power, extended to the party, by which he is relieved from the punishment he would otherwise suffer, if the pardon were not granted. "The granting of a pardon conveys the idea that an offense has been committed previous to its issuance. This is not only true in law, but true in general." Chief Justice Waite said, in speaking of pardon, "If there is no offense against the laws of the United States, there can be no pardon by the President."—Young vs. U. S., 97 U. S., 39, 66.

Having thus clearly defined what is meant by a pardon, we next look to the source from whence this power flows. It is a prerogative of sovereignty in monarchial governments, and in our own government, national and state, it is lodged in the chief executive of the United States and of the several states. As far back in the history of England as the reign of the Saxon kings, we find that they had the power to grant pardons, and since that period it has been considered as one of the prerogatives of the crown, and "down as late as the reign of William IV, at the close of the sitting of the Old Bailey the king personally attended in order to grant pardons or commute sentences of those recommended to him by the justices as entitled to clemency."—Criminal Law Magazine and Reporter, vol. 6, p 469.

In the case of the United States vs. Wilson, 7 Peters, 158, Chief Justice Marshall says: "The constitution gives to the president in general terms the power to grant reprieves and pardons for offenses against the United States. As this power had been exercised from time immemorial by the executive of that nation whose language is our language and to whose judicial institutions ours bear a close resemblance, we adopt their principles respecting the

operation and effect of a pardon and look into their books for the rules prescribing the manner in which it is to be used by the person who would avail himself of it."

In the constitutional convention "there was a motion made to limit his power to grant reprieves until the ensuing session of the Senate, and a further attempt to withhold the power to pardon for treason, and leave that power to Congress, or that he might pardon treason by and with the consent of the Senate. It was also proposed that in all cases the consent of the Senate should be necessary to render a pardon available. But the clause was settled as it is, without much controversy."

Under the article IV, section 9, of the constitution of this state, it is provided that the governor "shall have power to remit fines and forfeitures, to grant reprieves, commutations of sentence, except in cases of impeachment; but no pardon shall be granted nor sentence commuted except upon the recommendation, in writing, of the lieutenant governor, secretary of the Commonwealth, attorney general and secretary of internal affairs, or any three of them, after full hearing, upon due public notice and in open session; and such recommendation, with the reasons therefore at length, shall be recorded and filed in the office of the secretary of the Commonwealth."

This is analogous to the exercise of the power to grant pardons in England where the power is delegated to the secretary of state for the home department, on whose recommendation the queen acts.

Having thus ascertained what is meant by pardon and where the power of granting pardons is lodged, it remains to be seen how it has been exercised. It has been ruled by the supreme court of the United States, as well as the supreme court of this state, that the executive may pardon as well before trial and conviction as afterwards. Such is the law of England, as well as in this country in many of the states.

In the case of the Territory vs. Webb, 2 New Mexico, Ter. Rep. 147, it was ruled that "The governor of the territory has discretionary power to grant a full pardon or mitigate the punishment, and in determining the question of executive clemency the governor may properly consider matters that are beyond the province of the supreme court.

In Hatfield vs. Gulden, 7 Watts, 155, it was ruled by the supreme court of this state that "The power to pardon is a constitutional power to alleviate or remit punishment when *perhaps there is doubt of guilt*, or when the offense was committed under circumstances extenuating the crime," &c., &c.

In Gray vs. the Commonwealth, 101 P. S. R., 484, the supreme court says, "This case was argued here upon a motion for a new trial and two of the assignments of error are to the refusal of the court to grant it. We ought not to be called upon at this late day *to say that it is not* within the line of our recognized duties to correct *supposed errors in* the lower courts in this manner. Nor are *capital cases an exception* to this rule. We are not jurors and are

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called upon to weigh the evidence even when a human life is at stake, further than to say, when called upon to do so in an orderly manner, whether there is sufficient evidence to submit to a jury upon a particular question of fact. If the jury make a mistake, the remedy is a motion for a new trial in the court below. If a new trial is refused, when upon the evidence it ought to have been granted, and the judgment is affirmed here upon the law of the case, *the only remedy is an appeal to the pardoning power.*

"While the finding of the jury may fix the presumption of guilt, yet it is not absolutely conclusive, and new evidence, or a mistake in the finding of a jury, may be, and often does afford, an ample pretense for the granting of a pardon."

It is undoubtedly law "That the granting of a pardon is purely discretionary, but it is not claimed that it must be exercised upon mere caprice, but upon public consideration and upon such a discretion as is exercised by the courts."

Commutation has been defined as "Simply the substitution of a less for a greater penalty or punishment," and in another case that it "is the change of one punishment known to the law for another and different punishment also known to the law."

Taking into consideration, then, the fact that a pardon is "a remission of guilt," that it is "an act of grace proceeding from the power entrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed; that this power under the rulings of the supreme court, federal and state, may be exercised before as well as after conviction;" that under the rulings of the supreme court of this state it is a "constitutional power to alleviate or remit punishment *when perhaps there is a doubt of guilt;*" that the pardoning power may be invoked where there should have been a new trial granted; that it is purely a discretionary power. I take the broad and I trust safe position, that when an appeal is made for executive clemency, it becomes the duty of the body entrusted with the power to grant pardons to look into the whole case, examine the evidence and the law and determine whether under all the facts and circumstances of the case, the application should be granted.

Mr. Koontz then proceeded to review the facts of the case, occupying the whole of the morning session and part of the afternoon session. He was followed by Messrs. Kooser and Cessna for the Commonwealth. They were followed by Messrs. Gilbert and McCarrell, and the argument was closed by General Coffroth, who made a most able and forcible plea for the defendants. The board gave a patient hearing to all the arguments, consuming over thirteen hours, and also listened patiently to the argument for a rehearing, when counsel for both sides were again fully heard.

At the hearing before Governor Beaver on the 9th of January 1891, only the counsel for the defendants appeared. The Govern

stated that he had read the whole of the testimony and that he desired the counsel should confine their argument to the question whether, after a verdict of guilty was found by the jury; motion for a new trial refused by the court below; the rulings of the court below sustained by the Supreme Court; the refusal of the Board of Pardons to interfere, after a patient hearing of the case; he would be justified in withholding his signature from the death warrant. Messrs. Coffroth, Koontz, Gilbert, McCarrell and John M. Butler each made brief speeches.

On the day before the expiration of his term of office, January 20, 1891, Governor Beaver signed the death warrant and fixed the date of execution on April 2, 1891.

CHAPTER XII.

Sheriff Isaiah Good read the death warrants to Joseph Nicely and David Nicely on January 22, in the presence of a number of witnesses, not a few of whom were moved to tears as the Sheriff read the awful sentences of the document.

The Sheriff read the warrant for the execution of David Nicely first. "Well, David," said the Sheriff, "I have the death warrants." "All right," said David, with as much coolness as he could command. The Sheriff then went to Joseph's cell and told him he had his death warrant. "Yes, I expected it," said Joseph calmly. Ex-Sheriff McMillen was present, and when Sheriff Good concluded reading the warrant the ex-sheriff, with characteristic tact, commenced inquiring about Joseph's injuries, and thus turned the conversation from the real subject under consideration. It was a severe ordeal to Sheriff Good, whose abounding good nature came near getting the better of him.

It was the purpose of Sheriff Good to immediately put a death-watch over the condemned men; but the board of County Commissioners refused to authorize the appointment of a death-watch, because there is no law for such attendance. The custom of employing a death-watch is a relic of old English law, but it has never been incorporated in a Pennsylvania statute. The matter was taken before Judge Baer, who also refused to authorize the appointment of a death-watch. Subsequently, however, Sheriff Good appointed, on his own responsibility, Milton R. McMillen,

Martin Fleegle, Edward E. Schrock and George Witt, who kept watch over the doomed men on six-hour turns.

As the day of execution drew near the country was filled with rumors that the prisoners would be rescued before April 2nd. As an extraordinary precaution an outside guard was placed around the jail, composed of the following men: James M. Marshall, Tobias Yoder, Geo. W. Cole and Simon Berkey. Anonymous telegrams were sent to Sheriff Good warning him to be prepared, that an effort would be made to rescue the Nicelys. On the evening of April 1st a telegram was received by F. J. Kooser, Esq., stating that a large armed posse had left the vicinity of Ligonier in the direction of Somerset. Four additional guards were put on duty during the night; but, though the telegram to Mr. Kooser came from a trustworthy source, no effort was made to storm the Somerset jail.

JOSEPH NICELY PRONOUNCED INSANE.

About a month previous to the time set for his execution Joseph Nicely commenced to complain of severe pains in his head. Shortly thereafter a period of unusual depression came over him, and in the course of a week Joseph was performing all the freaks of a crazy man. It is now well known that Joseph Nicely was not insane; but it must be conceded that he played his part so perfectly that had the prisoner not thrown off his disguise a few hours before his execution there would have been grave doubt of his sanity when executed. Dr. H. L. Orth, of Harrisburg, was called to Somerset to examine into Joseph's mental condition. Following is Dr. Orth's report:

"Joe Nicely moved in a seemingly methodical manner around the rear half of the cell, starting from the washstand, which he would seize hold of, shake and pound, then to the smooth wall, passing his right hand along the surface until it met the projecting rib, which he would fumble a short time, then to the corner of the room, where he would pass his fingers over the rivet heads and up and down the angle iron, then pass on to the side and along the wall to another projecting rib, go through the same maneuvers with the same hand. Then, with his left hand and arm continually moving up and down in an aimless way, he would cross the room and repeat his walk, as if seeking some starting point to work his way through the walls. He never approached the cell bars. Noise in the corridors did not apparently in any way attract him.

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"*The medical* officer in charge of the jail tells me that about *four months* ago the prisoner escaped, remaining in the woo

three or four days, then gave himself up to the authorities; that he was in a half-starved and nearly frozen condition, and during and after his recovery he had frequent fits of depression which gradually increased in frequency until about three weeks ago, when failure to have his case reheard by the Pardon Board seemed to totally depress him and his present imbecility followed, and he has not, as far as can be discovered, spoken one word since that date.

"After ever effort to secure a reversal of the verdict or a pardon had proved abortive, the motive to simulate disease was so great, the carrying out of this simulation was so easy, even under the eye of a keen observer, in the time and place that could be secured for this investigation, that I approached the examination with great hesitancy, but the history of the prisoner (as learned from Dr. Kimmel and the jail attendants) his appearance, his physical condition, his manner of action all combined to sweep away my prejudices, and convinced me of the present mental and moral irresponsibility of the prisoner, and I undoubtedly pronounce him to be insane and a proper person to be committed to the care of an insane hospital."

A telegram from Harrisburg Saturday night stated: "Governor Pattison to-night said that the visit of Dr. Orth, of this city, to the cell of Joseph Nicely was not by his direction. The Governor has not taken any action on the application for the respite of the murderer, and will not likely interfere with the execution of Joseph Nicely's death warrant. The evidence of the latter's insanity is not sufficiently conclusive to justify the Governor in staying the execution, and as to the guilt of the Nicely brothers, nothing has been produced to convince him that they were wrongfully convicted. Gov. Beaver spent several months investigating the case before his successor was inaugurated, and he is said to be of the opinion, as a result of his inquiry, that the Nicelys were guilty of the crime for which they are to be hanged next Thursday."

DAVID NICELY MAKES A CONFESSION.

On April 1, the day before his execution, David Nicely made the following confession to Elder Calvin W. Granger, of the Somerset Disciple Church:

SOMERSET JAIL, SOMERSET, PA., April 1st, 1891.

I, David Nicely, make concerning the murder of Herman Umberger, for which I am convicted and sentenced to be hung April 2nd, 1891, the following statement: I was present when Herman Umberger was murdered. I left my home about 1 o'clock on February 27th, 1889, to go to some place in Somerset county for the purpose of robbery, but not murder, and did not know who was to be robbed, not learning Mr. Umberger's name until well along the road.

SHERIFF ISAIAH GOOD.

The murder took place about 7 o'clock in the evening. I arrived at my home about 1 or 2 o'clock the next morning. I had a pistol and fired into the ceiling, but not with the intention of hitting Mr. Umberger, nor did any shot I fired hit him. I intended only to frighten him.

As to my evidence in court, part was true and part was not.

My evidence in court was not true in this: I said I was not present at Herman Umberger's murder, when I was. The pocket-book produced in court as mine was not the one which I gave to Will Thomas, as I testified in court. It was bogus.

Hamilton Smith's testimony in the case against me was false in this: I was not in Ligonier on the 27th day of February, 1889, as he swore.

Lew Beener and Ed. McCracken did not meet me on the pike, as they stated in court.

Charles Vaneer and Lewis Vaneer, his son, could not have recognized me where their testimony says they did, on the Pittsburg and Philadelphia Pike, Feb. 27, 1889.

I make these statements in view of approaching execution, in the fear of God, truthfully, to C. W. Granger, my spiritual adviser.

(Signed) D. C. NICELY.

The manner of taking David Nicely's confession was as follows:

With his back turned toward the guards, as if in ordinary conversation, Elder Granger heard David Nicly's confession, sentence by sentence, which he then repeated to David, then wrote it down and read it to him, and then heard another sentence, treating it in like manner, till the confession was completed, when he read it all over to David in order, made such supplementary additions as were desired by David and then had him sign it.

A conspicuous absence from the confession is any statem about the money taken from Herman Umberger, and of an felt this at th

thought that over $20,000 was taken from Mr. Umberger," whereupon David replied: "The people are mistaken about that; it was very far from that amount." His manner and allusions also led to the inference that, whatever the real amount was, it was beyond David's power or control to restore it, and so the matter was not further pressed.

It will be noticed, too, that this confession is a confirmation of the statement of Sheriff McMillen, that after the first escape from jail David Nicely handed him a paper stating that he would tell all he knew about the Umberger tragedy, if he knew anything. provided the members of his family would be protected from any consequences that might possibly result from such a statement. In line with this is also the statement of Sheriff Good, that some days before the execution he saw David tear up a manuscript and throw it down the dry closet. These were days of fluctuating hopes and fears with respect to the possibility of a respite or a commutation of sentence. Especially suggestive was the remark which David made to Sheriff Good, when he said: "It is no use for Joe, but my life might be spared."

DAVID NICELY BAPTIZED.

At about 11 o'clock Wednesday morning the bath-tub in the exercise corridor of the upper floor of the jail was filled with water, preparatory to the baptism of David Nicely. There were present Deputy Barron, the Sheriff with his household and household visitors, the watchmen, four prisoners, and several members of Elder Granger's church, including a representative of the press and the court stenographer.

Elder Granger read the sixth chapter of Romans, received David's profession of faith in Jesus as the Christ, the Son or the living God and his Saviour, offered a fervent prayer, immersed David and then concluded with another earnest prayer.

During these services Joseph Nicely was in his cell, lying face downward with his head close to the bars, so that he could have stolen glances of the proceedings, or at least fairly hear all the services without seeming to be attentive. When visited by a spectator, immediately after the baptism, his face, however, was at that time turned in another direction; and he was apparently asleep.

DAVID'S FIRST AND LAST COMMUNION.

At about 7 o'clock on the evening of the same day, and in the

in his first and last communion. Besides Elder Granger, there were present the elders and deacons of his church. On the evening before his own death David was remembering the death of his Lord and Master by that institution which the Master instituted on the evening before His death. There was, however, an infinite difference in the parallel. The one was the Creator; the other a mere creature; the Master was about to die voluntarily for the sins of others; David Nicely was to die for his own transgressions.

The services over, the others retired while Rev. Granger remained with David till 11:15 P. M., in devotion and pious conversation. With the grip of a drowning man, on even a straw, David Nicely laid hold on the promises of the gospel; with but the dark veil of a single night between him and the world to come, he stretched his faltering, eager hand for the door of the upper kingdom. "It seems like mockery," he at one time said, "to have revelled in sin through a life, and to ask the Lord to take me; but, O! I'll lean hard on His mercy."

CHAPTER XIII.

THE DAY OF DOOM.

April 2, 1891, proved a most disagreeable day. Snow and rain, falling almost continuously throughout the entire day, combined to make the occupation of the street pedestrian exceedingly unpleasant. But the inclemency of the weather did not seem to deter the morbidly curious from going to Somerset; and, although the execution was not a public affair, they came in train loads, wagon loads, on horse-back and on foot. One eccentric old individual, who had himself travelled a distance of fifteen miles to Somerset, was heard to remark, "I believe all the fools in the State are here to-day."

As the hour for the execution of Joseph and David Nicely drew near, the great crowd of curious spectators mobilized itself around the county jail. For a space of about five rods surrounding the jail building the crowd surged up toward the walls of the building where nothing could be seen but the non-transparent windows of the jail building itself with its bright red paint and its hand parapets above. But one feature of the dread proceeding

was vouchsafed to the outside witnesses of the execution. The dull clang of the iron death traps was distinctly heard by the outsiders.

After 8 o'clock in the morning Elder Granger went to the jail, having been sent for by Joseph Nicely, who had suddenly found his reason shortly after 6 o'clock, about half an hour after the night watch had been relieved by the day watch. He struck his hand across his forehead, as if recovering from a dream, and inquired: "How did I get into this cell? What day is this?" Not long after this he asked pardon of Deputy McMillen for the injury he had done him, when the latter came into his cell.

When Rev. Granger came he found that Joseph had commenced writing a letter to his wife. Joseph looked up and said: "They say this is the day on which we are to be executed." Elder Granger replied, "It is." Then Joseph said, "I feel happy and like shouting." Elder Granger, knowing what he had a right to infer from David's confession, felt that he had no time to lose, if Joseph was to be brought to repentance; and he at once proceeded to read to him from the Scriptures the following and other incisive passages: "If thou bring thy gift to the altar, and go thy way, first be reconciled to thy brother, and then come and offer thy gift."—Matt. 5: 23-24. "But the fearful, and unbelieving, and the abominable, and murderers, and whoremongers, and sorcerers, and idolators, and all liars, shall have their part in the lake which burneth with fire and brimstone."—Rev. 21: 8.

Then he asked Joseph such questions as these: "Do you think a person who does not tell the truth can go to heaven? If a person guilty of a crime against his fellow man should confess it to God, but deny it to his fellow man, can he go to heaven?" All of which Joseph promptly answered "No." Rev. Granger continued, "If a man has done another wrong, what do you think he should do?" Joseph replied, "I think he ought to make it right with him, as far as possible." Then Rev. Granger said, "You committed a murderous assault on Deputy McMillen, what have you done about it?" He answered, "I did not know what I was doing when I shot him; I was excited and trying to get away. I want to see him and ask his forgiveness." Then the minister said, "Are you innocent of all complicity in the murder of Mr. Umberger?" The

It was evidently getting too uncomfortable for Joseph, and he said he had a letter to his wife to finish, and Mr. Granger left him, believing that there was no hope for Joseph, and went to the cell of David.

JOSEPH'S LAST LETTER.

SOMERSET, PA., April 2, 1891.

DEAR WIFE AND CHILDREN :—

Oh, how I would have liked to have seen you and talked to you. Now, Harriet, I want you to be sure and live close to God. Each evening and morning read a chapter from God's Holy Word, and pray with the children; for all you do, do not neglect this, and have the children kneel down at their bedside and pray each evening. Oh, live close to the Lord the few years you have to live here.

My watch I give to Renz, my shot-gun to Ira, my trunk and rifle to Waltie. The rifle, which Fred Rankin has, sell to him if you can; it ought to bring $10, but if you can not get that much sell it for less. My books, Lottie gets first choice, Millie second choice, Georgia third choice and Ella fourth. Then begin with Renz and on down to Ella until all are taken.

Now, Renz, you and Ira work for your mother and above all things give your hearts to God in your youthful days. Do not put this off, but begin now. Shall always watch for your coming into heaven. Oh, do not put this off.

My valise Sheriff Good will send to you. Sheriff McMillen has in his possession my diary which will be of a great deal of use to you. Write to him and get it. His P. O. address is (Lexington, Somerset county, Pa). My diary is in a pass book, and a part on sheets of paper. I could have talked to you much better, but I pray that God will be with you and keep you faithful to death and at last receive you all to himself is my prayer.

Your husband,

J. G. NICELY.

As Joseph concluded this letter he gave way to tears.

ANOTHER SPIRITUAL ADVISER.

When the Nicelys were being pursued after they had broken jail the first time, Rev. A. J. Beal was of the party and fired a pistol shot after them which cut Joseph's hair. It seems he preferred to risk Rev. Beal as his spiritual adviser rather than one who was sure to fire such bullets as Elder Granger had sent at him from the word of God, and he called the pastor of the Evangelical Association into his cell to minister to his anguished soul, as towards 10 o'clock he came into the jail by himself.

It is, however, commonly believed that Joseph confessed his guilt of the murder to him. At least Rev. Beal never denied that he did, though the question has been put to him by a numb

of persons, and when a denial would have been the natural and easiest answer. It is true that an interview with him in regard to the subject has been published in one of the Pittsburg dailies which apparently represents him as denying it, but it only denies that he has ever said to anyone that Joe was guilty, which is quite a different thing.

Rev. Beal gave the following account of his interviews with Joseph: "Towards 10 o'clock I went to the jail by myself and entered Joe's cell in answer to his request. We had a lengthy conversation as regards his spiritual affairs. He told me that he had made profession of Christianity under the Rev. D. P. K. Lavan's ministry, who was then on the Ligonier circuit, about 11 years ago; that he lived faithful to his duties for about three years, and then went astray, but now wished to return to the fold.

"He asked for communion, and I said, 'Joseph, I can administer communion to you only on certain conditions.' I said, 'You are acquainted with our Book of Discipline?' and he replied he was. Then I said, 'Before I can do that you will have to answer all those questions; can you do it?' and he replied he could, saying that for one year and a half he had been preparing for this, and that he felt all right and ready to go. We had no prayer then, but I read to him selections from the Scriptures and went away.

"About 12 o'clock I returned and read to him Romans 10:9–13, Titus 3:5, Mark 16:16 and John 3:14–16, and just before giving him communion I read 1 Cor. 11:23–29. He then received communion, and I read to him "Consolation for the Dying" from our Manual, consisting of the following passages: Is. 41:10, Ps. 116:15, Heb. 13:5, Ps. 55:22, Ps. 22:23, Is. 26:3, Deut. 31:8, Rev. 14:13, John 5:28–29, John 11:22–26, Ps. 37:37, Ps. 73:26, Prov. 14:32, Ro. 14:8, 1 Cor. 15:55–57, 2 Tim. 1:12, Heb. 2:14, 15, Hosea 13:14, Nu. 23:10, Rev. 21:4 and 22:5.

"After communion Joe sang "Dear Jesus, I love Thee; if ever I loved Thee, I love Thee now." He sang the entire hymn through by himself. Then he sang "Nearer, my God, to Thee," and I joined in with him. Then I handed him "Gospel in Song," at hymn No. 205. He read the hymn till he came to the lines

"The next one who will meet me, in the mansions fair and bright,
Will be my sainted mother, arrayed in garments white."

Here he broke down and wept. After communion Rev. Zinn, who *also had come up a few* moments before, came in and enjoyed a *part of the services.*"

AN INSPECTION AND LAST DINNER.

During the interval between the two above-named visits of Rev. Beal several noteworthy things occurred. One of these was the inspection by the Nicelys of their coffins, the ropes and the new handcuffs. This happened about 10 o'clock. David was already dressed in his best and Joseph made his last toilet and designated what things were to be sent to his family; then, in company with Sheriff Good and ex-Sheriff Winters, they went to the Sheriff's office to see the coffins, which Joseph pronounced "nice," taking a special interest in his one. Then the ropes, hitherto kept in a cell, were viewed, and Joseph expressed a fear that they were hardly strong enough, saying, "I want no mistakes made," but the Sheriff assured him that they were all right. Finally, Joseph tried on his new handcuffs and said they would do.

About 11:30 o'clock Mrs. Good brought in the last meal for the doomed men. It consisted of bread, cold chicken, custard, coffee, apples, prunes and several kinds of cake. They partook sparingly, but yet seemed to enjoy what they did eat. Sitting at the table with them, engaged in conversation, were Elder Granger and Sheriff Good and wife. Joe remarked that it was a sudden death to die, but it was inevitable and would have to be met, and added, "I am so glad that I am ready to go."

INTERVIEWED BY THEIR COUNSEL.

About 11 o'clock the counsel for the Nicelys, Messrs. Coffroth, Koontz and Ruppel, called on the Nicelys, having a reporter with them. First they saw Joseph privately then called in the reporter, when General Koontz said: "Joe knows that from the very start we urged him to tell the unqualified truth in this matter." With intense emotion and streaming eyes Joe replied, "yes, I do." "He also protested his innocence from the start," continued Mr. Koontz. "And you still do?" interjected the reporter. "Yes, sir, I do; and I am innocent," answered Joe. "You can just say that fraud and perjury have placed us where we are. Men and women testified to things that are not true, in order to get the reward that was offered. This reward will burn their hands now and in eternity, without they repent. I have no ill feelings towards any of my enemies. I forgive them all; I forgive them as freely as Christ has forgiven me all my transgressions."

After a few further questions, the counsel went to David's c and saw him also privately first, then called in the reporter

plied him with questions. He did not seem to care to talk, but, as the reporter has it, said: "I have denied any connection with the affair so frequently, so distinctly and so emphatically, that I do not care again to do so." "Are you innocent?" asked the reporter. Dave hesitated, averted his eyes for a moment, then said: "I will say, yes. That is all I have to say now." Presently he added, "I wish to say that my counsel have been steadfast, faithful and true to me. They have neglected nothing that would have served to save me and Joe." "Have you made a confession?" was next asked, and David answered, "I have made a statement to my pastor, Mr. Granger, and he will make it public. It is not a confession, but rather a comment on the testimony. That testimony about our going over the mountain was false, and the pocketbook they produced against us, bogus. That is all I have to say."

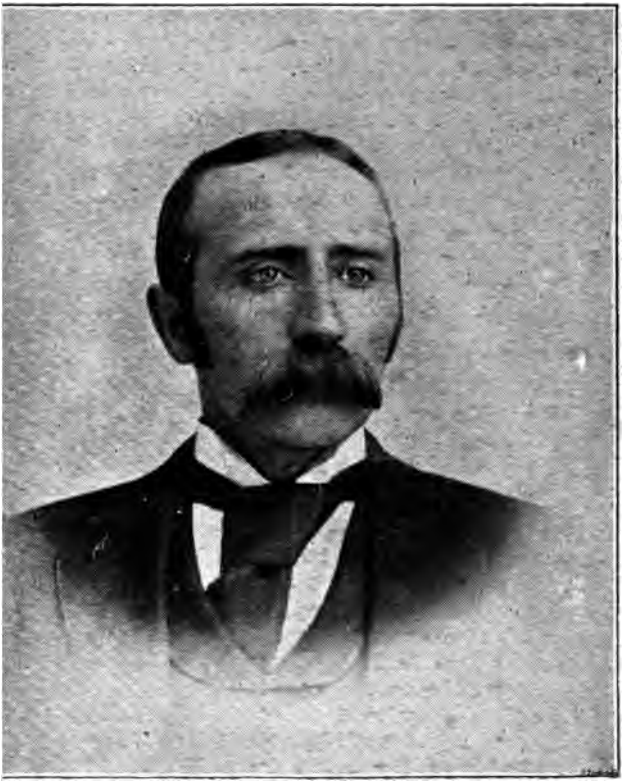
A SEASON OF WORSHIP.

About 12:45 P. M. the prisoners were transferred from their cells on the east corridor to cells on the west corridor, for the greater convenience at the last moment when the eighty visitors, thirty-three of whom were upstairs, should crowd the room.

It was the understanding between the brothers that the final services should be together. On reaching the west corridor, Elder Granger and David were shown into the first cell, but Rev. Beal and Joseph passed on to the second cell. The services in the first cell were quiet readings, talkings and subdued prayers, while the fervid singing in the other cell could be heard everywhere in the jail. About 1 o'clock, as the visitors began to come in, Dave sent to Joseph a reminder that the services were to be together, and Joe and Rev. Beal came over into David's cell. Then Rev. Beal started, but Joseph led, in succession, "He Paid It All" and "O, Glorious Fount." Then they knelt for prayer, and Rev. Beal said, "Pray, brother Joe." So much of it as could be distinctly made out by the official court stenographer, Rev. Peter Vogel, who reported the proceedings of execution day for this book, in the exercise corridor, the following was

JOSEPH'S PRAYER.

"O, Lord, look down upon us in this hour, and send us Thy comforting spirit. O, lift upon us the light of thy countenance reconciled, and be Thou one in our midst. We thank Thee that Thou hast so loved the world as to give Thine Only-Begotten Son,



DEPUTY SHERIFF H. F. BARRON,

that whosoever believeth on Him should not perish but have everlasting life. We thank Thee for the cleansing blood that has made us whiter than snow. We bless Thee for Thy pardoning power that has forgiven us our transgressions; for we have sinned against Thee. We come to Thee believing; receive us; receive us even to Thyself. Help us to lay hold by faith of Thy great promises. Give us peace in believing. Thine shall be the power, and the glory, forever. Amen."

David was at first kneeling with his back to the others, but in the midst of this prayer he wheeled around and threw his arms around his brother, bathed in tears. Rising from their knees, Rev. Beal started and Joseph's tenor led the song "Whiter than Snow." This was immediately followed by "My heavenly home is bright and fair," with the chorus "I'm going home to die no more." With peculiar fervor rung

> "When from this earthly prison free,
> That heavenly mansion mine shall be."

READING THE DEATH WARRANT.

At 1:19 Rev. Beal announced that they were through with their services and Sheriff Good, his assistants and the jury stepped in to read, and to witness the reading of the death warrant, which fixed the time of the execution between the hours of 10 A. M. and 3 P. M., Thursday, April 2nd, 1891. First he took David by the hand and read it to him, after which David said, "God bless you, Sheriff," and kissed him on the cheek. Then the Sheriff read it to Joseph in like manner, who not only kissed the Sheriff, but also several bystanders. Then the prisoners were left a few moments to their spiritual advisers.

THE LAST JOURNEY IN LIFE.

At 1:26 P. M. the prisoners started to the death-traps, which form a part of the upper floor and, when sprung by a lever, let the men drop into the lower story, suspended by ropes which were fastened to rings in the upper ceiling. Two by two the procession came, first Sheriff Good and Deputy Barron, then David and Elder Granger, next Joseph and Rev. Beal, last Deputies McMillen and Dickey and Barron and Hartzell. Two chairs had been set under the traps, which David and Joseph occupied. Then Elder Gran said

"LET US PRAY."

Prisoners and ministers knelt and Elder Granger prayed as follows:

"Our Father in heaven, we come to Thee for strength at this moment. We pray that these, now so soon to come into Thy presence, may both have strength for this great ordeal. We pray Thee that all their sins may be forgiven for His dear sake who died for them and all mankind. May they find peace with Thee and, as they leave this world, may they go to a world free from pain and sorrow. Lead Thou them through the dark valley and shadow of death to the green pastures of life. Let Thy rod and and Thy staff comfort them. And remember Thou, in Thy loving kindness, those whom they leave behind them. We make these requests in the name of our dear Saviour."

Before rising, Rev. Beal continued:

"O, God, our Father in heaven, before whom angels and archangels bow in humble adoration, we come into Thy presence and ask Thee, for Jesus' sake, that Thy presence may be found in our midst and in the heart of each brother that is now to go into Thy presence. Sustain them on this occasion and make it to them the way to glory. Seal them for Thyself and claim them as Thine in Thy presence. O, forgive them their transgressions. Grant to bless them by the witness and comfort of the Spirit. And by and by, when we are done with this world of sorrows, grant that we may all meet at the beautiful river of life. We ask it all in the name of Jesus. Amen."

As they rose from prayer someone said, "God bless you."

Then the Sheriff said, "Dave, have you a statement to make?"

David arose and said: "I have nothing more to say than the statement, Meet me in heaven. If I am instrumental in saving one soul I shall be satisfied. Good-bye."

Having said this, he sank back into his chair, and the Sheriff asked Joseph if he had anything to say. He rose and said: "I want to say to you that I am now about to appear before the judgment bar of God, and I want to say, prepare to meet your God; for the time will certainly come when you must appear in His presence. That is all I have to say. May God be with you all." Then he hesitated a moment and added: "I have no enmity against anyone; I forgive you all. Good-bye, good-bye." This was followed by a general hand-shaking and good-byes, led

by the Sheriff and joined in by his deputies, the court stenographer and jury and a few others. Joseph also kissing a number of persons with a convulsive kiss.

THE FINAL SCENE.

The hands of each prisoner were then fastened at his back by handcuffs, the thighs strapped together in a figure 8 tie and another strap passed around his ankles. Then the nooses of the ropes were passed over their heads and drawn up to fit their necks with the knot behind, Joe saying when asked if it was too tight, "No, that is about right." Then black hoods were drawn over their heads and fitted up to their necks with drawstrings. As Joe's was being put on, William Good, the jail janitor, who was in the room outside and looking in through the food passage, called in "good-bye," which Joe answered.

As the sheriff was stepping over to the lever, David uttered this prayer: "O, God, be merciful to my soul." Then Joseph said, "My dear Saviour, receive my soul before Thy throne." As David was beginning other ejaculations the Sheriff said, "Good-bye, boys," and pulled the lever, and the two men dropped into eternity at 1:37 o'clock.

The ropes had been adjusted for a three-and-a-half feet fall, but the tightening of the nooses and the stretching of the ropes caused the tops of their heads to be a few inches lower than where their feet had stood. The struggles of the dying men amounted to no more than a shrugging of the shoulders and a slight swinging back and forth of their feet. Dr. S. S. Good felt the pulse of David and Dr. H. S. Kimmel that of Joseph, and in 14 minutes the physicians pronounced them dead. At 1:56 they began to unstrap them and lowered David at 1:69 and Joseph three minutes later, carrying each one into the Sheriff's office and partially embalming them in their coffins. Uudertaker C. A. Lowry had come from Ligioner to do this last office and to deliver them to their parents for burial. They reached Ligioner about 11 o'clock that night and were buried the following Sunday, viewed by about eight hundred spectators.

Thus these two men paid the penalty for the crime of murder, in answer to the law of the Commonwealth of Pennsylvania and in harmony with the decree of God, "Whoso sheddeth man's blood, by man shall his blood be shed." Let us hope that their repentance was genuine and that the conditions and circumstances of their lives were such that God would accept them at that late hour, notwithstanding the general rule that "no murderer shall inherit the kingdom of God."

Should anyone be so forgetful of human kindness as to feel like taunting innocent survivors with the misdeeds of these men, let him hear the word of God, at Ezekiel 31:2 and 20, and fear for his own soul: "What mean ye, that ye use this proverb concerning the land of Israel, saying, The fathers have eaten sour grapes and the children's teeth are set on edge?" "They shall not bear the iniquity of the father, neither shall the father bear the iniquity of the son."

HON. WM. J. BAER.

THE SOMERSET COUNTY JAIL.

W. H. RUPPEL, ESQ.

D. J. HORNER, PROTHONOTARY.

EX SHERIFF EDGAR KYLE.

W. H. RUPPEL, ESQ.

D. J.

EDGAR KYLE

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PART II.

THE McCLELLANDTOWN GANG.

For some years Fayette county was over-run by an organized gang of marauders known as the "McClellandtown Gang." Fayette county was not, however, their exclusive field of operations. There is little doubt but the robberies committed in the northern part of Somerset county in 1877 and 1878 were the work of this gang. Other Pennsylvania counties and the border counties of Maryland and West Virginia were frequently visited by these desperate villians, and their many misdeeds, if fully chronicled, would fill a good-sized volume. All attempts on the part of the authorities of Fayette county to arrest the gang proved unsuccessful, although the newspapers were frequently filled with accounts of the outrages they had committed on old women and old men whom they tortured to the point of giving up their savings of a lifetime. The Fayette authorities were intimidated with threatenings from the gang, and they feared the vengeance of the desperadoes, so that finally all hopes of putting down the gang were abandoned.

The capture of this notorious gang on Sunday, April 28, 1889, by an armed body of brave men led by ex-Sheriff Kyle, of Meyersdale, was one of the most brilliant feats on record—an act that deserves to be embalmed forever in local history.

On the evening of April 13, 1889, the house of Christian Yoder, a wealthy old resident of Summit township, was entered by four masked men, who bound and gagged the hired man, Samuel Stevannus, and all the members of the household except Mrs. Yoder, who was in feeble health. The leader of the gang told Mr. Yoder that they had come for his money; and that they would take

life if they failed to get it. Mr. Yoder directed them to a bureau drawer in an adjoining room where, he said, they would find all the money there was in the house. Here they found $100, which they counted and told Mr. Yoder they wanted all the money he had. He assured them that that was all the money he had at home, but they did not believe him, and started to make a thorough search of the house. In a trunk was found fifty dollars belonging to Mrs. Yoder and eighty-six dollars belonging to Miss Ellen Baker, the hired girl.

In spite of Mr. Yoder's repeated assurances that they had got all his money the cowardly scoundrels did not believe him, and dragged the feeble old man out of the house, across the yard into the barn, where they started a fire on the threshing floor and told Mr. Yoder they would burn down his barn if he still refused to tell them where the rest of his money was concealed. Mr. Yoder again protested that he had no more money, when one of the gang produced a rope and fastened it around the neck of the defenseless old man, remarking as he drew up the noose, "The old man has lived long enough anyhow—hang him up, boys." The other end of the rope was thrown across an over-head beam and, pulled by the strong arms of two of the gang, the old man's form was soon dangling in the air, six feet from the floor. When in a few minutes his breathing became labored they lowered their half-dead victim to the floor and again demanded that he tell them where his money was hidden, but he again denied that he had any more money about his home. At the command of the leader of the gang Mr. Yoder was a second time drawn up, and, not content with the atrocities they had inflicted on their aged victim, these devils of torture, who had all the while kept a close watch over the fire they had kindled with diabolical design, collected the burning hay and straw and placed it under the feet of the old man, now almost lifeless. He was held suspended over the fire in the midst of a suffocating smoke, while the cruel flames blistered his hands and scorched his garments. The old man was again lowered and the flames were extinguished, but they found the victim of their barbarous cruelties to be unconscious and unable to longer plead for his life and protest that he had no more money to give them.

When Mr. Yoder regained consciousness he was lying on the kitchen floor. Standing over him were two of the gang—one with

a revolver pressed against his forehead, and the other brandishing a long dirk-knife over him, as if in the act of cutting the old man's throat. "Tell us where your money is or we will kill you for sure this time," said the man with the dirk-knife. Mr. Yoder could only repeat his oft reiterated protests that he had no more money to give them.

While the man with the revolver and the man with the dirk-knife were inflicting the last round of fiendish torture upon the old man the other two members of the gang ransacked the house from cellar to garret in search for anything of value they might be able to find. They found small quantities of whisky and wine, some hams, some sugar and some articles of clothing which they appropriated. "Bring up the grub, boys," shouted the ringleader. Bread, pies, meat and all the delicacies to be found in cellar and kitchen were spread upon the family table and what they could not eat they destroyed; then, binding the old man, hand-and-foot, they prepared to leave. The ring-leader, who afterward proved to be Charles Lewis of McClellandtown fame, gave Mr. Stevannus a chew of tobacco and wound his watch for him. From the house they went to Mr. Yoder's barn and took a span of fine gray horses which Mr. Yoder prized very highly and rode away at break-neck speed.

There is no telling how long the members of the Yoder household would have been left in their pitiable plight had it not been for the anxiety of a faithful wife. Mr. Stevannus usually took his supper at Yoder's house, but nearly always reached his home at 9 o'clock. Mrs. Stevannus waited patiently that evening for her husband's return, but when the clock struck eleven she sent her two sons to Yoder's house to inquire for their father. They found the members of the Yoder household in the same condition as they were left by the robbers.

The work of releasing the helpless victims was speedily done. Word was sent to Summit Mills, a village within a mile of the Yoder residence, and to the neighbors living on surrounding farms. A large posse of armed men on horseback started from Summit Mills before day-break in pursuit of the gang; but the robbers, who left at least four hours before on the backs of Mr. Yoder's well-fed horses, had too long a start. Near Pinkerton, on the western slope of Negro Mountains, the jaded animals were recovered, but not the thieves.

AN AMUSING ESCAPADE.

Under date of Tuesday, April 16, 1889, Mr. W. W. Hartzell wrote, rather facetiously, the following to the Meyersdale *Commercial* from Confluence:

Yesterday afternoon, near John Ringler's; about one and a-half miles from here, a daring incident occurred, but before giving account of it I will anticipate.

On Sunday a telegram was received here telling of the brutal robbery of C. Yoder near Summit Mills. Later the same day information was received that the robbers were traced to near Pinkerton, where the horses of C. Yoder were abandoned. It seemed impossible to trace the scoundrels any further.

However, on the following morning (Monday) near Walkers' Mill, Alex Coughenour missed one of his horses from his stable and immediately started in pursuit, tracing him through Addison and Somerfield to a point near Markleysburg, Fayette county, where he recovered his horse, the thief or thieves having left the horse for safer quarters in their native mountain retreat. This depredation is supposed to have been done by part of the gang who robbed C. Yoder.

Just half a mile from Coughenour's at William Hanna's barn, on the same morning, two men were discovered in the hay mow and Mr. Hanna demanded explanation with a double-barreled shot-gun. But the plausible story of their going to Confluence to get work on the new railroad caused Hanna to release them. Arriving in Confluence they casually visited all the stores, pricing, but not purchasing, goods. They were carrying a sack of considerable size. In the afternoon they started toward Somerfield, and had proceeded to near John Hanna's, at the old Joe Bowlin farm, on a steep hill-side road, where William Hanna, John Hanna and Ross F. Augustine arrested the suspects. Just here came along John A. Walker on horseback and Andrew Flannigan leading a steer, and they were requested to help take the "suspects" to Confluence, and consented. The party started, and, after getting to the forks of the road at John Hanna's, William Hanna left the party to go the near road home, depending on the remaining men to bring them to Confluence. Near John Ringler's the large man, who was on the buckboard with Ross F. Augustine, took advantage of circumstances, and placing a revolver in Augustine's face, made him leap from his wagon, climb the fence and scamper down through the meadow. And, as John Hanna had the other suspect on the horse behind him, they were soon on the ground in a terrible struggle, the suspect outdoing Hanna. Flannigan and Walker, who were driving up the steer, seeing Ross Augustine running down the meadow, imagined something unusual had occurred, and just then Augustine called to them to hurry up, when Walker put his horse to gallop and came up quickly to the contesting parties, when the suspect who made Augustine run coolly pointed his revolver at Walker, made him dismount, climb the fence and follow Augustine down the meadow; and then, by the potent persuasion of fire-arms, both suspects mounted, one on the horse of John A. Walker and the other on the horse of John Hanna, and, flourishing four revolvers, they demanded the road of Flannigan, who was coming up with the steer. Flannigan was powerless to arrest their flight in the face of four revolvers. They galloped the horses about two and a-half miles toward Somerfield, and, seeing A. Weakland and son coming toward them on horseback, they abandoned the horses and took to the woods.

As soon as Ross Augustine and John A. Walker could get horses they followed fast in pursuit, and at the point where the suspects left the horses they were only a few minutes late.

In the bag they had several nice hams, sausage, a gallon demijohn *with whiskey, two maple sugar* bricks, chestnuts, etc., supposed to be the *property of C. Yoder.* * * * A large posse is in pursuit.

While it was a great mistake on the part of Messrs. Hanna, *Augustine and Walker that* they did not search their prisoners be-

fore starting toward Confluence with them, it must be remembered that probably none of them ever did any police service before. Mr. Augustine had $2,500 on his person that day, of which the desperado Lewis, whom he had undertaken to convey to jail, presumably had no knowledge. The man who got away from Mr. John Hanna was Decatur Tasker, a young man of extraordinary physical power.

The neighborhood surrounding the village of Summit Mills is one of the wealthiest farming communities in Somerset county. The people of the neighborhood are mostly members of the German Baptist or Brethren church, with a considerable sprinkling of the yet more conservative Amish persuasion. Their religious teachings are opposed to the taking up of arms, even in defense of life itself. But the brutal torture and robbery of old Mr. Yoder produced a sensation throughout the southern section of the county that was well calculated to make men forget their religious scruples against the maintainance of law and order at any cost. Never since the dusky savage had taken his last farewell from the fertile valley of the Elk Lick had such a bold atrocity been committed in that quiet, law-abiding community.

An organization was formed in which Mr. U. M. Miller and Mr. Lewis A. Kretchman were the leading spirits. It was a secret organization; but the wealthy farmers of the neighborhood contributed liberally into its treasury. From the moment that organization began its existence the fate of the McClellandtown organization in Fayette county was determined. Like a true prophet, the editor of the Connellsville *Courier*, referring to the operations of the outlaws at Yoder's, wrote:

"They are now heard from over the mountains in Somerset county. In crossing this Rubicon, they did not perhaps calculate the danger to which they rendered themselves liable. The record of the Somerset county people in the Umberger case indicates that they are not to be trifled with. Among the Frosty Sons of Thunder, the apprehension of criminals is regarded as the patriotic duty of every good citizen and not exclusively of the law. This feeling stirred up the countryside and resulted in the prompt arrest of Collins Hamilton and the Nicely brothers This feeling makes Somerset county dangerous ground for the Fayette gang. Whether Fayette will ever become dangerous ground for them depends upon the people themselves as well as upon the county authorities."

The work of organizing a posse of men to invade the stronghold of the desperadoes in Fayette county was given into the hands of *ex-Sheriff Kyle*, of Meyersdale. At Confluence Dr. B. A. Fichtner was entrusted with the important work of reconnoitering the country about McClellandtown, and so well did the Doctor do

part that the promoters of the movement were each day informed by mail or telegraph of the whereabouts of the Fayette bandits.

On Saturday, April 27, a telegram from Dr. Fichtner conveyed the information to Mr. Kyle that the gang had come home and would remain at home over Sunday. Accordingly on Sunday morning Mr. Kyle boarded the west-bound 3 A. M. train with his posse of brave men, composed of the following: Peter Albright, Nicholas Murphy, J. J. Holtzshu, John Wagner, Thomas Reese, Geo. R. Witt, Samuel Firl, U. S. Firl, J. M. Kretchman, Amos Lindeman, James Leckenby, Herbert Leckenby, A. Herring, J. H. Lowry, Alvin Lowy, Charles Garletz and Albert Lybarger. The men took breakfast at Confluence, where they were joined by Dr. Fichtner, Lloyd Show, Jacob Show, John Stanton and Fred Yagley. After breakfast the party proceeded in wagons in the direction of Markleysburg, Fayette county. It was after the dinner hour when the posse under the command of Messrs. Kyle and Fichtner reached Markleysburg, and the citizens of the town kindly offered to feed them. This generous invitation was accepted, but Messrs. Kyle and Fichtner placed a guard around the village to prevent the news of their arrival in Markleysburg from reaching the headquarters of the gang. This subsequently proved a valuable precaution.

After dinner Messrs. Kyle and Fichtner held a consultation with Justice Markley, Mr. Hiram Umble and Doctor Sweitzer, of Markleysburg, in an undertaker's shop, where the plan of capture was adopted. It was known that the rendezvous of the McClellandtown gang was at the house of William Hill, located in a lonesome woodland near the road leading from Markleysburg to McClellandtown, but there were three houses within a radius of a mile which the members of the gang were known to frequent.

The men, nearly all of whom were armed with Winchester repeating rifles, were divided into four squads, with Constables Albright, Holtzshu and Murphy each at the head of one squad, while Messrs. Kyle and Fichtner led the squad that was to make the descent on the Hill mansion. A squad was sent to surround each of the other two houses, and the fourth was to march to the corner of the three States—Pennsylvania, Maryland and West Virginia—to intercept any retreat in that direction.

The following graphic account of the capture was given in the *Somerset Herald*, dated May 1, 1889:

Charles Lewis, the leader of the gang, was supposed to be stay*ng in the "Hill House."* It was from this house that the cut-

throats made their escape some weeks ago when a party of Fayette county officials attempted their capture.

The house is built of logs and is weatherboarded. It is one and a-half stories high and faces on the Brandonville road. W. B. Hill, commonly known as "Bill Hill," one of the most reckless members of the company of desperadoes, is the proprietor, and it is here that the gang are wont to bring their booty and to flee for refuge when pursued by officers of the law.

Dismounting and tying their horses to trees about a half mile distant, Mr. Kyle and his party proceeded to surround and close in upon the house. At the near approach of the party a fox-hound owned by Hill set up a dismal howl, which brought the mistress of the house to the door. After looking carefully around Mrs. Hill retired within doors, and in a few seconds returned with her husband, W. B. Hill.

As the couple stepped out of the front door of their domicile they were ordered to throw up their hands, and they were allowed to look down the barrels of several Winchester rifles by way of incident. They lost no time in elevating their hands, and one of the attacking party stepped upon the porch and placed a pair of iron bracelets upon Hill's wrists. Mrs. Hill was also placed under arrest while this was being done. While the Hills were being cared for three men appeared at one of the windows of the second floor with the intent of jumping out. But, fortunately, they looked before they jumped, and the stalwart form of Peter Albright, pointing a repeating rifle in their direction, met their gaze and deterred them from taking their rash leap. Then they dashed to the window on the other side of the attic, but the sight of several Winchesters in the hands of determined-looking men gave them no encouragement to make their exit from that quarter.

Dr. Fichtner, who was standing on the porch, called to the men to come out and surrender. The reply was, "No, * * ; we will fight till we die." Sheriff Kyle then ordered his men to break in the door. At this Mrs. Hill called out: "My God, I hope you are not going to try to break into that house; if you do, you are dead men." She then called to the inmates of the house to come out, and begged them not to show fight. After some parleying she persuaded the men to come down from the attic.

Mrs. Hill continued to beseech the robbers to surrender, and they finally concluded that discretion was the better part of valor, and that, as escape seemed impossible, they would act upon Madam Hill's advice. Charles James Lewis, the leader of the gang, stepped out upon the porch with a revolver in his hand and said: "Come in, gentlemen; walk in." "Up with your hands," cried Hiram Umble, leveling his Winchester on the robber leader, and the doughty Lewis, the celebrated leader, the notorious highwayman, the daring robber, the fearless bandit, the dauntless captain of the famous "McClellandtown Gang," threw up his hands and quietly submitted to having a pair of hand-cuffs placed upon his wrists.

Seeing that their redoubtable leader was at last a prisoner, th

two other members of the gang present, Decatur Tasker and Jack Sullivan, decided to surrender and quietly marched out of the house and submitted to their captors.

A party was detached to take the three prisoners to Markleysburg, while the balance of the squad proceeded to search the house. In the house were two young females who gave their names as Lou Teat and Nettie Sullivan. They denied that there were any stolen goods or fire-arms in the house, but a search showed that they were mistaken. A double-barreled shell gun, loaded, was found lying by one of the attic windows and two 38-calibre Smith & Wesson revolvers were found in the wood-box behind the stove. A silver-mounted 38-calibre Smith & Wesson revolver was taken from the person of Mrs. Hill. Louisa Teat and Nettie Sullivan were placed under arrest and forwarded to Markleysburg.

The squad who surrounded the Thomas house near the State Line came in with two members of the gang, Marshall Sullivan and Jere Thomas. On their way to Markleysburg they met a young man by the name of Anderson and at once took him into custody. Young Anderson was a regular walking arsenal. He was fairly loaded down with a brace of revolvers, a dirk-knife, handy billy and a pair of steel knucklers. He was equipped for business, but submitted to arrest without resistance.

The prisoners now numbered ten and it became necessary for Captain Kyle to press several teams into service to convey them to Confluence. The rain had been pouring down all day and the country roads were in an almost impassable condition. It was five o'clock when the party left Markleysburg and it was long after night when they reached Confluence, where they took the B. & O. express for Meyersdale, arriving there at 2:24 Monday morning.

A hearing was given the prisoners at Meyersdale. Charles Lewis and Jackson Sullivan waived a hearing. Justice W. B. Cook committed the entire band to the county jail, where they were taken the following day.

The news of the capture had spread over the county in an almost incredibly short time, and large crowds of people gathered at every station along the railroad from Meyersdale to Somerset. The arrival of the prisoners at the County Seat and their march to the county jail was one of the most exciting scenes ever witnessed in Somerset. As the last prisoner entered the jail corridor a mighty cheer went up from the immense crowd on the outside.

The entire McClellandtown party were given a hearing before Judge Baer on May 10, 1889. After the hearing Judge Baer said: "There are such circumstances surrounding this case that we will remand all the men and discharge all the women." Their trial came up at the regular May term of court; and, although Messrs. Holbert and Uhl made a very able defense for the prisoners, Charles J. Lewis, Decatur Tasker, Jackson Sullivan and Marshall Sullivan were convicted on May 30th.

Mr. Holbert made a motion for a new trial, but the Court overruled the motion and sentenced the prisoners to ten years' separate and solitary confinement in the Western Penitentiary.

PART III.

OTHER SOMERSET COUNTY TRIALS.

In the year 1795, the year that Somerset county was erected by Act of Assembly, but before the act creating the new county had gone into effect, a murder was committed in the town of Berlin. A German Reformed preacher, Spongenberger by name, was arraigned before his congregation on a charge of adultery with one of the female members of his flock. At the hearing, which was held in the church, a Mr. Glessner, an officer of the church and a very highly esteemed citizen, gave evidence of a very damaging character against the pastor which so enraged the minister that he whipped out a large knife and plunged it into Glessner's breast, striking him in the region of the heart and killing him instantly. Spongenberger was arrested and taken to Bedford, where he was tried and executed.

THE FRENCHMAN.

The first murder case tried in Somerset county was at the February term of court in the year 1807, when Noel Huguel or Hugues was tried and convicted for the murder of one Pollock. The murder was committed on the Allegheny Mountain, in the neighborhood of where 'Squire William Reel now lives in Shade township. Pollock was a drover, and was supposed to have a large sum of money on his person when he was waylaid and shot by two Frenchmen, brothers. In trying to evade arrest one of the brothers was shot and killed; the other being arrested and brought to Somerset and placed in jail. At the time of the trial of Noel Hugues the Oyer and Terminer Court was holden before John Young, President Judge, and Robert Philson, John Kimmell and William G. Elder, Associate Judges. The following is an extract taken from the brief record of the trial of the case. The record is a small book, about the size of a pocket diary, which, in that day, was sufficient to contain the criminal records of the court:

Jury—Henry Wey, Henry Bowsinger, Michael Troyer, Emanuel Smith, Patrick Nelson, Conrad Shultz, Jacob Meyers, William Ogg, Peter Augustine, William Morgan, Henry Weimer, Jacob Swank.

Who upon their oaths and affirmations aforesaid respectively Do say that the prisoner is Guilty in manner and form as he stands indicted of *murder in the first degree*. Whereupon the prisoner being brought be*fore the Court on* the 27th of February 1807 to receive his sentence, the *Court thereupon* adjudge and direct that he be taken back to the jail *from whence* he came and from thence to the place of execution

W. H. RUPPEL, ESQ.

D. J. HORNER, PROTHONOTARY.

EX SHERIFF EDGAR KYLE.

WOLFGANG HOFFMAN.

The next murder case tried in the Somerset county courts was that of Wolfgang Hoffman, at August Sessions, 1880. Hoffman was charged with killing his wife, Elizabeth, in June, 1880, by striking her on the head with a hammer. John Smith, Cornelius Tressler. Robert Guthrie, Gabriel Good, Elijah Holliday, William L. Hoover, Jacob Bittner, Rufus Hay, John Ravenscraft, John Blake, John Mowry and Edward Rhoads composed the jury. The verdict was "not guilty." At this trial the Hon. William J. Baer, now President Judge of the Somerset-Bedford Judicial District, conducted a most brilliant defense, without which old man Hoffman would undoubtedly have been convicted.

HENRY J. PATTERSON.

At September Court, 1889, Henry J. Patterson was tried for the murder of his step-father, John Speicher, on Sunday, June 22, 1889. It was shown in evidence that Speicher was a man of intemperate habits and had frequently abused and brutally beat his wife. On the Sunday when the tragedy occurred Speicher had beed drunk and struck his wife in young Patterson's presence. The young man became so enraged at the cruel treatment of his mother that he took a gun from a neighbor's house, followed Speicher nearly a mile and wounded him so that he died during the following night. Patterson was convicted of murder in the second degree and sentenced to the penitentiary for a term of four years. There was much sympathy for young Patterson, and many persons thought he should have been acquitted. The jury in the case was composed of Benjamin Kline, Luther S. Hillegas, J. B. Gerhard, Adam Poorbaugh, Jacob M. Walter, B. B. Coughenour, Charles Ream, Herman Johnson, Dennis M. Weimer, Jonathan Ling, Joseph Glessner, John E. Largent.

JAMES H. LEHR.

James H. Lehr was tried for the murder of Charles H. Scott at September Court, 1889. Young Scott was a member of a fishing party from Pittsburg that had encamped along the river near Confluence. Lehr was the cook employed by the party. On Sunday, July 21, Lehr became too drunk to perform his duties about the camp, and he commanded the members of the company to do his bidding at the point of a revolver. The young men became alarmed at Lehr's reckless use of his revolver and started to leave the camp. Lehr ordered young Scott to come back and when he refused to return shot him in the back, killing him almost instantly. At this trial General A. H. Coffroth and W. H. Ruppel conducted the prosecution and Hon. W. H. Koontz and Thomas M. Marshall, of Pittsburg, appeared for the defendant. The jury were Dennis M. Weimer, John J. Martin, Urias S. Folk, William G. Knepper, John H. Custer, Frederick Koontz, Jonathan Ling, Herman Johnson, Luther J. Hillegas, Josiah Metzler, D. H. Vought and Edmund Holsopple. Lehr was convicted of murder in the second degree and sentenced to the Western Penitentiary for ten years.

Business Directory.

SOMERSET.

J. Harry Fritz, Real Estate Agent; surveyor and conveyancer; money to loan and loans negotiated on first class securities; Estates settled; land titles examined and abstracts furnished; also a number of valuable farms, houses and lots for sale or rent. Office up-stairs in Cook & Beerits's Block.

H. H. Zimmerman; Groceries, fine tobaccos and cigars.

Josiah Keller, Postmaster.

Geo. W. Benford, proprietor of the Old Reliable Drug Store. Largest stock in the county.

W. M. Hochstetler, Merchant Tailor; work guaranteed.

A. W. Knepper, proprietor of Farmers' Shoe Store. Reliable goods at lowest prices.

C. B. Vought, Star Grocery, always in the lead in every line.

Solomon Uhl, Pension Agent; claims prosecuted rapidly and successfully.

Mahlon Schrock, Groceries, Flour and Feed. Fine tobaccos and cigars. Opposite Somerset House.

Dr. J. M. Louther, Physician and Surgeon; leading Somerset Druggist.

Herr Bros., watches, clocks, jewelry; repairing a specialty.

Harriet S. Gastiger, leading photograph gallery. Best work in the county.

Economy Shoe Store, Frank Shivler proprietor. Best bargains in boots and shoes. Repairing.

M. E. Dennison, saddlery and harness, whips, etc. Main Cross street.

N. B. McGriff, leading oyster caterer and first class restaurant. National Bank Building.

A. E. Pisel, old favorite restaurant; confectioneries, groceries, etc. In First National Bank Building.

Somerset Marble and Granite Works, W. F. Shaffer proprietor. Bronze monuments. Best workmanship and most reasonable prices.

Knepper & Ferner, General Merchandise; clothing a specialty. I. O. O. F. Building.

J. H. Miller, General Hardware, stoves, tinware, oils, paints, no*tions* and toys. Best washing machine in the U. S.

SOMERSET.

Neff & Casebeer, Watches, clocks, jewelry, etc. Repairing and engraving neatly and substantially done. Scientific adjustment of eye glasses and spectacles.

Jacob S. Picking, first class livery at reasonable rates. Union street.

W. C. Weaver, wagonmaker and blacksmith; best workmanship guaranteed. Patriot street.

Mrs. M. E. Schrock, millinery and fancy goods. Extensive wall-paper department; window blinds, etc. S. E. Cor. Diamond.

C. H. Sufall, wagonmaker. All work guaranteed. Buggies. carts, etc.

A. H. Huston, Carpenter; Undertaking a specialty; Coffins, caskets, robes, etc., always on hand. Turkeyfoot street.

Dr. H. S. Kimmel, Physician and Surgeon. Main street.

Rhoads Bros., livery stable. Best attention to traveling men.

W. H. Koontz, Attorney-at-Law.

Coffroth & Ruppel, Attorneys-at-Law.

John H. Uhl, Attorney-at-Law. Pension Agent. Mammoth Block.

Colborn & Colborn, Attorneys-at-Law.

A. C. Holbert, Attorney-at-Law. Mammoth Block.

H. L. Baer, Attorney-at-Law.

Valentine Hay, Attorney-at-Law.

H. S. Endsley, Attorney-at-Law.

J. A. Berkey, Attorney-at-Law. Odd Fellows Building.

Scott & Ogle, Attorneys-at-Law.

Harvey M. Berkley, Attorney-at-Law.

J. O. Kimmel, Attorney-at-Law.

J. C. Lowry, Attorney-at-Law.

James L. Pugh, Attorney-at-Law.

Dr. P. F. Shaffer, Physician and Surgeon. Office next door to Commercial Hotel.

Dr. J. W. Carothers, Physician and Surgeon. Office on Union street, opposite court house square.

L. W. Brehm, Farmers' Restaurant; Somerset Bakery, Confectioneries, groceries, etc.

John H. Kantner, manufacturer of all kinds of woolens; the celebrated Kantner's Yarns. Custom work a specialty.

Josiah Woy, dealer in all kinds of lumber, cross ties, bark, etc.

R. S. Stewart, Meat Market. Mammoth Block. Fresh fish in season; dressed poultry.

Somerset House, E. A. Tayman proprietor. Largest and best equipped hotel in the county.

W. H. Reitz, manufacturer of Pride of Somerset (fancy patent) Eureka and Lilly roller flours.

I. G. Jones & Son, Contractors and Builders; also dealers in sash, doors, blinds, glazed windows, mouldings of all kinds.

Jones & Jones, machinists and foundrymen; old R. R. Depot.

W. H. Platt, dealer in oysters and fresh fish. Best grade of oys*ters in bulk or served* by the quart, can or stew. Basement *Cook & Beerits' Block.*

BUSINESS DIRECTORY.

BERLIN.

National Hotel, Samuel S. Shaffer, proprietor.
Matthews & Kimmel, Groceries, Provisions, Queensware, Glassware, Flour, Feed, etc.
Z. T. Kimmel. Postmaster.
W. A. Seibert, Lumber, grain, hay, produce and farm implements.
Edward Hoover, Distiller of Pure Somerset County Rye Whisky.
F. B. Collins, Dry Goods, notions, clothing, hats, caps, boots and shoes, carpets, etc.
A. G. Kimmel, Breeder of fine short horn cattle, registered Poland China hogs and Plymoth Rock Chickens.
Krissinger & Kurtz, Hardware, tools, house furnishing goods, stoves, farming implements, oils, paints, etc.
L. J. Esken, dealer in live stock. Meat market.
A. C. Floto, dealer in general merchandise, country produce, etc.
W. H. Manges, dealer in boots, shoes, leather and findings; custom work and repairing done promptly.
E. Atchison, Planing Mill, Building Contractor.
Jacob J. Zorn, Building Contractor, Plasterer.
Paul G. Nowag, dealer in Dry Goods and Clothing; hats, caps, boots and shoes; leather and shoe findings; jewelry, watches and clocks; millinery and fancy goods.
Dr. Garey, Physician and Surgeon.
C. R. Zimmerman; Groceries, flour and feed.
T. H. Floto, manufacturer and dealer in tobacco and cigars.
Maggie Garey, Millinery and ladies dress goods.
A. K. Johnson, dealer in all kinds of furniture, chairs, mattresses and springs, coffins, caskets and robes.
R. H. Koontz, Berlin Marole Works, marble and granite monuments, tablets, headstones, etc. Proprietor of Berlin Livery.
Charles A. Floto, manufacturer and wholesale dealer in fine seed and Havanna cigars.
J. A. & W F. Philson, dealers in General Merchandise. Opposite National House.
E. L. Cook, dealer in General Merchandise and Produce.
Jacob C. Philson, successor to D. A. Brubaker, dealer in General Merchandise.
E. A. Winslow, Confectionery, Oyster saloon, foreign and domestic fruits.
S. Philson & Co., Bankers. Established 1866.
Reitz Bros., Grist mill builders and furnishers, dealers in all kinds of mill machinery.

MEYERSDALE.

S. H. Dull. wagonmaker; rebuilding and repairing vehicles a specialty.
Ed. K. Beachly, Meyersdale Livery; good stock and reasonable rates.
W. H. Sufall, Postmaster; dealer in all kinds of lumber.
Slicer House, Nathaniel Slicer, Proprietor.

BUSINESS DIRECTORY.

MEYERSDALE.

The Meyersdale Commercial; L. A. Smith, editor and Publisher. The best advertising medium in Somerset county. Subscription price $1 50.

Dr. W. H. Meyers, Physician and Surgeon.

Eichnor Drug Company; for drugs, watches, jewelry and silver ware go to, or send to, the Eichnor Drug Company.

Dr. S. S. Good, Physician and Surgeon.

The Jones House; E. Kyle, proprietor. First-class accommodations.

A. F. John, dealer in lumber and general merchandise.

H. J. Ebbecka, Groceries and Confectioneries.

W. S. Mock, Photographer, Centre street.

Charles S. Griffith, general smithing; repairing a specialty. Full line of rivets, bolts, etc.

Jacob J. Donges, meat market, dealer in live stock.

H. Clay McKinley, Physician and Surgeon.

Joder & Boucher, practical machinists. Steam and gas fitters. Agents for the celebrated Strickler hay carriers.

Farmers' Bank, S. D. Livengood, President.

R. Reich, established 1870. Manufacturer and dealer in all kinds of furniture. Undertaking a specialty. The Love button-hole sewing machine.

M. Hady, dealer in Oysters, fresh fish; vegetables and fruits in season.

W. H. Hay & Son, dealer in General Merchandise.

J. T. Shipley, wholesale and retail dealer in hardware and all kinds of agricultural implements; stoves and tinware; field and garden seeds. Centre street.

Commercial Hotel, the popular $1-a-day hotel. J. H. Slicer, proprietor.

CONFLUENCE.

A. M. Ross, dealer in General Merchandise.

Dr. B. A. Fichtner, Physician and Surgeon.

Dr. M. Tannehill, Physician and Dentist.

J. M. Dodds, dealer in General Merchandise.

Scott Sterner, proprietor Confluence Hotel; first-class accommodations.

M. Henry, dealer in clocks, watches, jewelry and fancy goods. Repairing a specialty.

James A. Bradley, Justice of the Peace.

Groff & Son, dealer in General Merchandise.

Mrs. W R. Mountain, confectionery and restaurant; ice cream and oysters in season.

H. B. Tissue, dealer in Dry Goods, Notions, etc.

J. E. McNutt, dealer in stoves, tinware, pumps, etc.

Henry Kurtz, dealer in all kinds of oak lumber.

SUMMIT MILLS.

U. M. Miller, dealer in general merchandise, Glades butter, maple sugar, etc.

BUSINESS DIRECTORY.

JENNER X ROADS.

Dr. C. P. Lenhart, Physician and Surgeon.
J. M. Cover, general merchandise, postmaster and justice of the peace.
A. H. Shaffer, proprietor of Cascade Flouring Mills. Dealer in grain, flour and feed.
John A. Risinger, general merchandise, millinery, etc. Specialties: Farm implements and sewing machines.
Frank House, Josiah Frank, proprietor.
O. M. Shaulis, general smithing, manufacturer and builder of wagons, buggies, sleds, etc. Geo. E. Brown's patent protection shoe for invalid horses.

PETERSBURG.

Charles A. Mitchell, Central Hotel.
Henry Risheberger, Justice of the Peace.
H. Risheberger & Son, furniture and undertaking.
William Stark, wagon-maker, carriages, buggies and repairs.
Robert E. Ross, general merchandise and postoffice.
Amos F. Jeffries, tannery, saddle and harness maker.
Dr. W. F. Mitchell, Physician and Surgeon.
Joseph Null, general blacksmithing; all work guaranteed.
Thomas E. Null, blacksmith, builder of all kinds of vehicles. All work guaranteed.

URSINA.

A. S. Levy, saddle and harness maker.
Coder & Davis, general merchandise.
Peter H. Sellers, general merchandise.
Benford & Alfather, Ursina Roller Flouring Mills.
Lee Forquer general merchandise.
J. B. Jennings, Justice of the Peace.
Lizzie Benford, millinery and postoffice.

STANTON'S MILLS.

W. J. Dinges, general merchandise.

FRIENDSVILLE, GARRETT COUNTY, MD.

Friendsville livery stable, and Taylor's Hotel; W. Taylor, proprietor. Also dealer in hardware. Practical blacksmithing. All work guaranteed.
Leslie E. Friend, postmaster; dealer in general merchandise. Proprietor Friendsville Hotel.

DRAKETOWN.

J. M. Wilson, dealer in general merchandise.

PITTSBURG, PA.

S. U. Trent, Attorney-at-Law, 98 Diamond street, Pittsburg Pa

BUSINESS DIRECTORY.

HARNEDSVILLE.

A. J. Colborn, general store and postoffice.

SOMERFIELD.

A. C. Frey, general merchandise.
T. M. Hook, general merchandise; full line of furniture.
Vansickle & Jacobs, Somerfield roller and flouring mills.
William Endsley & Son, general merchandise; manufacturer of hubs, spokes, handles. etc. Planing mill.

MARKLEYSBURG, PA.

Hiram Umbel, undertaker and dealer in general merchandise.
Dr. S. Sweitzer, Physician and Surgeon.
A. J. Umbel, saddle and harnessmaker; confectionary and restaurant.
S. K. Thomas, general merchandise.
Isaac Meyer & Son, flouring mill and building material of every description.
John Markley, Justice of the Peace.

LAMBERTSVILLE.

James & L. C. Lambert, proprietors of Lambertsville carp ponds. Orders for stocking ponds solicited. All persons buying carp from us receive free instructions in pond building.

JOHNSTOWN, PA.

Dr. William Rauch, Physician and Surgeon; office No. 37, Park Row.
M. W. Keim, real estate dealer; room 38, Public Park Building.

SALISBURY.

D. O. McKinley, resident dentist.
Sam. Mier, manufacturer and dealer in all kinds of guns, pistols, etc. Repairing done promptly and all work warranted.

NEW LEXINGTON.

Centennial Factory, cloths, cassimeres, jeans, yarns and carpets, Jacob Baker, proprietor.

KINGWOOD, SOMERSET COUNTY, PA.

Samuel Metzler, proprietor of Metzler's Distillery. Pure Rye Whiskey. Flouring mill and saw mill. Oak, chestnut and poplar lumber.

RUMMEL P. O.

Holsopple Lumber Mills; hemlock lumber a specialty. Daniel *Holsopple, proprietor.*

BUSINESS DIRECTORY.

STOYESTOWN.

Noah Bowman, General Store.
Custer House, S. Custer, proprietor.
George B. Gardner, General Insurance Agent and Justice of the Peace.
Paul B. Schlag, General Merchandise.
Dr. J. H. Gardner, Physician and Surgeon; proprietor of Gardner's Anti-Zymotic Remedy,—prevents malarial and typohid fevers. A new remedy just now sweeping over the country.
Hite House, John H. Hite, proprietor.
John A. Young & Son; General smithing, wagons, carriages, buggies, etc.
W. H. Miller, Justice of the Peace; breeder of short horn cattle and South-down sheep.
Josiah Specht, (Sprucetown) General Merchandise, Flouring Mill, Agricultural Implements, Lumber, etc.

ROCKWOOD.

Rockwood House, restaurant attached; meals at all hours; open day and night, D. H. Wolfersberger, proprietor.
J. D. Miller, general merchandise, also hardware and farming implements.
Ash & McElfish, dealers in general merchandise.
Dr. Chauncey Forward, physician and surgeon.
Baker & Co., general merchandise; groceries a specialty.
Rockwood Planing Mill. Established 1872. A. Growall & Co.
Dr. David Gildner, Physician and Druggist, Justice of the Peace.
John Short, tinware, copper and sheet iron ware, stoves pumps, etc.
Merchants' Hotel, Sam Buckman, proprietor.
J. W. Harrington, merchant tailor; all work guaranteed.

FORWARD.

W. E. Lohr, dealer in general merchandise, postmaster and justice of the peace.

HILLSBOROUGH.

John Egner, dry goods, groceries, flouring mills; proprietor of the largest apiary in Somerset county.

SCALP LEVEL, PA.

Garrett Ream, dealer in general merchandise.
Dr. J. A Louther, Physician and Surgeon.

DAVIDSVILLE.

Davidsville Hotel, Joseph Walcher, proprietor.
Isaac W. Kauffman, planing and saw mills; dealer in hardware and lumber.
Peter L. Swank, Physician and Surgeon.
Daniel Hoffman, dealer in dry goods, fancy goods, boots and shoes; queensware, hardware, etc.

BETHEL (HOLSOPPLE P. O.)

D. W. Border, dealer in dry goods. groceries, notions, hardware, etc.
A. E. Cassler, dealer in dry goods, notions, groceries, boots and shoes, railroad ties, etc.
J. J. Reitz, merchant and custom mills; flour, feed and grain of all kinds; orders filled promptly at bottom prices.
Henry Risl., general blacksmith; shoeing and repairing specialties.
S. E. Berkey, postmaster.
Kore Kauffman, Justice of the Peace; builder and contractor.
Elijah Berkey, meat market; dealer in live stock.

GEBHARTS.

H. W. Dennison, agent for the celebrated Weaver Organs—best in the market.

LIGONIER, PA.

R. A. Witt, practical druggist; Murdock's Block.
N. M. Marker, general store; established 1850.
National Hotel, J. F. Menoher, proprietor.
Ligonier "Echo," a weekly newspaper published at Ligonier by Graham & Brant, $1 25 per year.
C. C. Griffith, justice of the peace and real estate agent.
J. A. Ashcom, resident dentist; all work guaranteed.
Murdock & Berkey, dry goods, groceries, hardware, clothing, etc.
J. W. Keffer, dealer in general merchandise.
William J. Potts, dealer in drugs, medicines, chemicals, etc.
L. B. Weller, dealer in groceries, hardware, paints, oils, etc.
James Lawson, groceries and confectioneries.
S. Murdock, dealer in lumber, doors, sash, castings, etc. Building contractors for mills, factories, etc.

HOOVERSVILLE.

A. B. Clark, dealer in general hardware.
Irwin P. Dull, grocer and merchant.
P. J. & H. Blough, dealers in general merchandise, groceries, flour feed, grain, bark, crossties, conntry produce.
George Hoover, dealer in general merchandise; proprietor of Pleasant Dale Creamery.
J. C. Hoffman, cabinet maker; undertaking a specialty.
Geo. E. & W. P. Hoover, proprietors of Hooversville planing and saw mills; dealers in all kinds of lumber; manufacturers of Hubbard's patent bee hives.

LISTONBURG.

Jesse Liston, woolen manufacturer, general merchandise and postoffice.
Wass & Lininger, lumber dealers; orders solicited and promptly filled.

BUSINESS DIRECTORY.

COFFROTH & CO.,

—MANUFACTURERS OF—

ALL KINDS OF FURNITURE.

UNDERTAKERS & EMBALMERS.

SOMERSET, PA.

With the season comes the necessary house furnishing, at once the pain and pleasure of every good housekeeper, and in many cases the inevitable replacement of old furniture with new. In view of these facts we are glad to direct attention to the large assortment we carry, and the bargains we offer. The very best advertisement of our goods would be the goods themselves, could they be sent around for general inspection. As this is impossible we fall back on the faithful types to assist us to describe in some measure the chief feature of our spring stock. By way of preliminary, we may say that we have brought our long business experience and knowledge of local tastes to the selection of the goods we offer; and with a result which we hope will be as gratifying to our customers as to ourselves. In every department our stock will be found to be complete; nothing having been neglected in our effort to make it the most complete assortment of goods ever offered to the trading public of this locality. Our customers will find that in respect to quality our stock has no superior, if any rival, our policy being to sacrifice a margin of our profits rather than sacrifice the confidence of our customers in the goods we sell. Some rather unusual opportunities have been offered to watchful buyers to secure bargains in some of the desirable standard lines. These we have taken advantage of and customers will find that our prices are unusually low, relative to the value of goods we offer. We aim to satisfy all classes of buyers, and our stock therefore includes the variety of grades which have correspondingly varied prices. We desire to be known for cheapness, but we handle no cheap goods, that is to say we give even in low price grades, the very best article the market affords for the money. It is a short sighted policy for any merchant to make a reputation for low priced goods at the expense of his reputation for values. Our steady aim is to satisfy buyers, not only by alluring bargains but by the satisfaction that comes in goods that wear and stand the test of actual use. In the matter of novelties we think our stock will leave nothing to be desired. By being early in the market we secured the early choice of styles and patterns which always gives the buyer the advantage of picking up such seasonable novelties as are soon exhausted, if they prove desirable to purchasers. We commend to our customers our own method, that of early selection, as it follows in all cases that the patterns which are the most fancied are the soonest exhausted. We speak with conviction when we say that we do not think any previous season has seen a more inviting display of goods than those to which we direct attention, and of which we invite your inspection.

Very Respectfully,

COFFROTH & CO.

FERNER BROTHERS,

Leaders in

Gents' and Ladies'

ONE PRICE

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Fine Shoes,

ALL STYLES AND WIDTHS.

Solid, guaranteed Working Shoes and Boots a specialty.

BEST QUALITY RUBBERS.

MAIN CROSS STREET - - SOMERSET, PA.

BUSINESS DIRECTORY.

Fisher's Book Store,

SOMERSET, PA.

WHOLESALE AND RETAIL.

This large and complete establishment has been in existence since 1880, and has patrons in every town, township, hamlet and at every postoffice in Somerset county. Its sales also extend largely into Cambria, Westmoreland, Fayette and Bedford counties.

The Wholesale Department.

The wholesale department sells goods to over 100 town and country merchants and Boards of School Directors in Somerset and adjoining counties, and is at all times prepared to supply stores with school books, school supplies and stationery at best wholesale prices.

The Retail Department.

The retail department is very complete, and is prepared at all times to furnish almost any book published. The stock of letter paper, envelopes, inks, pens, pencils, slates, tablets, albums, blank books, pictures, frames, mouldings, pocket books, reward cards, school books, magazines and miscellaneous books is always large Law books, legal blanks, justices' dockets always in stock carriages for sale. Agency for newspapers, magazines periodicals. Mail orders receive prompt and careful att

H. F

OLDEST HOUSE IN SOMERSET.

After many years of mercantile life this old establishment still easily maintains its lead. Its reputation is built up on the ground of long years' dealings with the people of Somerset County, who have always realized more than they expected from us.

We always offer the largest stock to select from and our goods always speak for themselves. Hence our continued and unbroken career of success.

We have for many years paid especial attention to our department of

Clothing and Carpets,

[illegible] which we invite the careful in[illegible]tion of every[illegible]body.

[illegible]HN M. HOLDERBAU[illegible]

[illegible]MIN GRO[illegible] - - SOMERSET, [illegible]